

A HELP TO
MAGISTRATES,
AND
MINISTERS of JUSTICE:

ALSO
A Guide to Parish and Ward-Officers.

CONTAINING,

1. Plain Directions for Justices of the Peace
2. To their Clerks. 3. Of Grand and Petty Juries,
&c. 4. Penalties upon Foretallers of Markets, Fairs,
&c. 5. Some Directions to Coroners and their In-
quests, &c. 6. Of Mayors of Towns, and the sever-
al Branches of their Office. 7. The Office and Du-
ty of a High-Constable, Petty-Constable, Headoo-
rough, Tything-man, Bailiff, &c. 8. The Office and
Duty of Churchwardens and Sidesmen. 9. The Of-
fice and Duty of the Overseers of the Poor. 10. The
Office and Duty of Toll-keepers and Fair-keepers.
11. The Office and Duty of Surveyors of High-
ways, Scavengers, &c. 12. The Office and Duty of
Officers in respect of the Preservation of the Game,
with several Cases. 13. Observations about Games
and Gaming-Houses, with the Penalties. 14. Of
laying Wagers, &c. with Cases adjudg'd.

The Sixth Edition.

With considerable Amendments, and Additions, agreea-
ble to the several Acts of Parliament in these Cases
made and provided, not in any former Impression.

By P. S. Gent.

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THE
PREFACE
TO THE
READER.

Reader,

THIS little Treatise contains a great many Things useful and necessary to be known by all *English* Men, who at one Time or other may stand in Need of them, by Way of Advice, as well as some may do to put them in Practice. It is a Collection indeed, but such a one, that of this Nature scarcely has appeared in any one Volume, though large, and at great Price, and certainly never before in so small a Compass. It contains how-

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The Preface.

ever, in Quality, more by a great deal than upon the First View can reasonably be guessed by its Quantity. I need not instance Particulars, seeing in the Title-Page they are briefly set down, and in the Table more at large.

I cannot doubt but it will be Instrumental in doing a great deal of Good: *First*, In giving Men an Insight what they ought legally to do. And, *Secondly*, What they ought to avoid, as not warrantable, in the one Kind to rest secure, and in the other to keep out of Danger, saving themselves thereby much Trouble and Expence. I have mostly quoted the celebrated Books from whence it is taken, and warranted by Men exceeding skilful in the Laws of the Land; and for that Particular especially, have left Names behind them that cannot be obliterated: Also I have cited such Statutes Ancient and Modern, as the Parliaments have been pleased to

The Preface.

to make for well ordering of Government, and rendering us a happy People, in the Security they give us as to Life, Liberty, Property, &c. So putting all this together, I doubt not but the Reader's Expectation will be answered according to his Desire, in that he will find nothing omitted he can think material, as far as is proposed, or herein could be contained; and then both of us have our Ends, I in writing, and he in reading, so useful a Work, as past all Peradventure will find Encouragement, and descend to Posterity. I am,

Courteous Reader,

Your Friend to serve you,

P. S.

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READER,

Observe these short Directions to know the Authors, being Alleged or Quoted, as you find them set down throughout the whole Book.

L A M. or Lamb. or Lambs. Mr. Lambard's Justice of Peace. Dal. or Dalt. Mr. Dalton's Country Justice of Peace.

Br. Brook; some Time Lord Chief Justice of the Common Pleas.

F. or Fitz. Fitzherbert; some Time one of the Judges of the Common Pleas.

Dy. Dyer; some Time Lord Chief Justice of the Common Pleas.

Di. certain Directions or Resolutions of the Judges of Assize, *Anno 1643.*

Co. Sir Edward Coke; some Time Lord Ch. Justice of the Kings Bench, *viz.* his Books of Reports.

Co. Lit. Sir Edw. Coke's first Part of his Institutes upon Littleton.

Fi. M. Hen. Finch Apprentice del Ley.

P. Pl. Plow. Mr. Plowden's Commentaries.

Raf. or Rast. Rastal's Abridgment of the Statutes.

Lib. Entr. The Book of Entries.

Cr. Cro. or Crom. Crompton's Justice of the Peace.

P. Po. or Pol. Mr. Polton's Abridgment of the Statutes, Pr. R. Mr. Polton *de Pace Regis.*

Directions to the Reader.

B. A. Sir Francis Bacon his Elements of the Common Law. **B. A. V.** his Use of the Law.

Resol. of the Judge's. Resolutions of the Judges of Assize, *Anno* 1633. to certain Queries:

Wing. Wingate's Abridgment of the Statutes.

As for the Statutes cited, I conclude they are easie to be directed to by what is set down from the Names of the Kings and Queens, as 2 R. 2. the Second of Richard the Second. 6 Hen. 7. the Sixth of Henry the Seventh. P. M. Philip and Mary. El. or Eliz. Queen Elizabeth. Jac. or Jacobi I. King James the First, and so of others: For where there have been more Kings of the Name than one, the Figure is set down to distinguish that King, in what Reign the Statute was made, from the rest, as Edw. 1. Edw. 2. Edw. 3. Edw. 4.

The Experienced
Justice of Peace.

In Respect to his Power, in and out of Sessions, in many Cases of great Importance : Useful for Justices, their Clerks, and others.

C H A P. I.

The Antiquity of a Justice of the Peace, his Power, and Authority, and the Execution of his Office, in many material Cases.

THE Power of a Justice of the Peace is very great; it is a Prop and Pillar of Government, in taking Care to prevent and punish Offences, whereby the Peace is conserved, and Men maintained in their Rights, and the Possessions of their Goods and Chattels, &c. peaceably; whereas, were there not such over-awing Magistrates, Offenders would be emboldened to make more frequent Depredati-

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ons, and Strength and Violence would seize upon what the Weaker could no ways defend against them, were not the Law by this Means very much their Aid and Safeguard. This Office is of a great Antiquity, and has all along held up a venerable Esteem among the People, who find great Advantage and Benefit by those so commissioned, being usually Men of Estates, discreet, and judicious, capable of discerning Truth from Falsehood; to relieve the Injured, and restrain Oppressors, to punish Criminals, and discharge the Innocent and Faultless.

Justices of the Peace were created, 1 *Ed. 3. cap. 15. Dalt. 6. Lamb. 10.*

But they were first named so by 36 *Edw. 3. cap. 12.*

A Justice of the Peace is a Judge of Record; from whence they are called Justices, and before 1 *Edw. 3.* they were called Conservators, 3 *Cro. 29, &c.* He may take Recognizance of Peace, which none can do but a Judge of Record, *Lam. 186. Dalt. 8. Crompt. 196. a. Num. 1.*

He is called Commissioner of the Peace, by reason he is authorized by the King's Commission; so *Custos Pacis*, or Keeper of the Peace, the same with *Justiciarius Pacis*, or Justice of the Peace. And the Constitution of Justices of Peace is inherent, and inseparable from the Crown, *Stat. 27 Hen. 8.* And this Power cannot be transferred. 20 *H. 7.*

His Warrant is not to be disputed by the Constable for any Thing wherein he hath Jurisdiction of the Cause. *Dalt. 8. cap. 147. 6, &c.*

In some Cases the Testimony of a Justice of the Peace is of as great Force, and in some Cases greater than an Indictment of 12 Men upon Oath, viz. In case of Presentments of Highways, Force, Riot. *Dalt 9. Lamb 65.*

A Ju-

A Justice of the Peace being assaulted, may commit the Party so offending to Prison. *Dalt.* 371. *Lamb.* 134. *Crompt.* 68. *a.* If a Justice see one about to make an Affray, and charge him to keep the Peace, and he answers he will not, he may bind him to his Good Behaviour. *Dalt.* 294.

Where the Statute referreth a Trial to the Justice's Discretion, it seemeth he may examine upon Oath. *Dalt.* 20. And every Justice of the Peace is a proper Conservator of Rivers within his County. *Lamb.* 189.

If a Felon be brought before a Justice of the Peace upon Suspicion, though it appear to the Justice he be not guilty, nevertheless he is not to be set at Liberty, but so that he may come to his Trial. *Lamb.* 233. *Dalt.* 389. *Cro.* 40. *b.* *Num* 20. Otherwise it would prove a voluntary Escape in the Justice; for he is not to be delivered by any Man's Discretion. *Dalt.* 8. *Lamb.* 223.

C H A P. II.

*What may be done by a Justice of Peace
ex Officio, &c.*

IN Absence of the King's Attorney, a Justice of the Peace may take Issue with one that pleadeth a Pardon, that he is one of the Parties excepted. *Lamb.* 540.

A Justice of the Peace may take Money for the Security of the Peace, *in deposito*, where Bail cannot be procured, and which, upon the Party so depositing the Money, breaking the Peace, shall be forfeited to the King. *Just. Berkley,* 1 *Cro.* 446.

If upon supposing an Indictment to be void, the Justices have discharged the Prisoner, paying his Fees, yet upon change of their Opinion, they may stay him any time before Judgment. *Lamb.* 540.

Justices of the Peace may enquire of all Manner of Felonies at the Common Law, or given by any Statute; and of all Manner of Trespasses against the King's Peace, and such Trespasses wherein Actions of the Case will lie for Trespasses or Deceit, and in the End of the Writ grounded upon the Case, it is contained, *Contra Pacem nostram. Crompt.* 8. *a.* Num. 25.

Defaults against the Stat. 3 Hen. 6. cap. 11. for levying of Wages for Knights of the Shire, are to be heard and determined by Inquiry for the King or Action for the Party before the Justice of Peace, *Lamb.* 512.

A Justice of the Peace has no need to shew his Commission, by which he is made Justice of Peace, when he justifieth the doing of any Thing as a Justice; for he is Justice of Record, and the Commission remaineth with the *Custos Roculorum* of the same County, and he is called by Commission in open Assize, or Sessions. *Crompt.* 120 *b.* Num. 13. *Lamb.* 387.

A Justice of Peace may have his Action of the Case against the Party that calleth him false Justice of the Peace; it also seemeth that he may be indicted, for they may inquire of all Trespasses where a Man may have his Action of the Case. *Crompt.* 121. *a.* Num. 21. and 122. *a.* Num. 29. To say a Justice doth not understand Law is indictable. *Mod. Rep. Part 3.* 159.

A Justice of the Peace, certifying into the King's Bench, that such a one broke the Peace in his Presence, the Party shall be put to his Fine, without a Traverse to the same. *Crompt.* 132. *a.* A Ju-

A Justice of the Peace. who is of the *Quorum*, ought to be resident in the County where he is a Justice of the *Quorum*. 2 Hen. 5. cap. 4. *Crompt.* 122. a. Num. 32.

A Justice of the Peace commandeth one by his Precept under Penalty of 10 l. to be at the Quarter Sessions next ensuing it, and he appeareth not; no *Scire Facias* shall go forth more than if there had been a *Subpœna*, however it seemeth, he shall be attached to be at the next Sessions upon Contempt. *Crompt.* 123. a. Num 9.

CHAP. III.

What one Justice of Peace may do by Power and Vertue of his Commission, without requiring to be joined with another or more, in Acting, in what relates to his Office.

HE may cause all such as are fit, to work in Harvest, or Hay-time, and after license them to go into any other County.

He may compel one fit in his Discretion, to be bound Apprentice. by 5 *Eliz.* 4.

He may it seems give Directions to Watchmen, Keepers, and Searchers of infected Persons. *Crompt.* 126. b.

He may cause to be whipped Trespassers in Orchards, Corn, Hedges, or Woods, not able to give any Satisfaction. And he may hear and determine by Examination, or otherways by his Discretion, the Offences committed in Tile-making.

One Justice of Peace may command vagrant Persons to Prison, if they will not serve.

If upon supposing an Indictment to be void, the Justices have discharged the Prisoner, paying his Fees, yet upon change of their Opinion, they may stay him any time before Judgment. *Lamb.* 540.

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One Justice of Peace may command vagrant Persons to Prison, if they will not serve.

He may upon his View of Forcible Detainer, record it by 15 *Rich. 1. cap. 2. Dalt. 81. 12.*

He may punish Deceit in Cloth by Tenters, &c.

He may cause High-ways to Markets to be enlarged, and cleansed of Trees and Bushes. 13 *Edw. 1. cap. 5.*

He may punish Keepers of Places for unlawful Games, and the Players at those Games.

He may punish prophane Swearing in his Presence, made out by Testimony or Conviction by the Party's own Confession.

He may convict of Drunkenness, by 12 *Jac. 1. c. 7.*

He may punish Offences in Watermen, and Transporters of Corn.

He may punish Defaults of Collectors of Sheriff's Amercements; and of Bailiffs of the Hundreds. Soldiers that purloin their Horses or Furniture.

One Justice of the Peace, upon Complaint, may commit, till the Assizes or Sessions, any Popish Recusant convicted, above 18 Years of Age, under the Degree of a Baron; so for refusing the Oath of Allegiance. 7 *Jac. 1. cap. 6.* And require Recusants having no Lands, to abjure the Realm. 35 *Eliz.*

He may cause to be set in the Pillory in the next Market Town, Persons convicted of breaking the Assize of Fuel, and not able to pay the Forfeiture, with a Billet or Faggot bound to his Body. 7 *Edw. 6. c. 7.*

He may cause an unlicensed Alehouse-keeper openly to be whipped after Conviction, where there is no sufficient Distress to pay the Penalties. 3 *Car. 1. c. 3.*

He may upon View, or Proof by two Witnesses, warrant the levying 20 s. Forfeiture for an unlicensed Alehouse, to be given to the Poor.

One Justice may demand the Peace against another Man. *Lamb.* 91. And he may punish Persons going, or riding armed, contrary to the Statute of 2 *Edw.* 3.

A Justice may inquire of *Felo de se*, hid, or cast into the Sea, where the Coroner cannot have the View of the Body. 3 *Inst.* 55. And he may send Writs for Fugitive Labourers, by 2 *H. 5. c. 4. St.* 1.

He may take an Information out of the County against an Offender in the County. 1 *Cro.* 213.

So a Recognizance to prosecute by Assent of the Parties out of the County, but cannot use Coercive Power. *Ibid.*

A Justice of the Peace inhabiting in the Hundred where one was robbed, may, if he be at *York*, or *London*, take the Party's Oath, being but an Examination, and no Act of Jurisdiction.

A Justice of Peace in *London* ought to send Felons to the common Gaol, not to the Compters. 1 *Co.* 120.

He may take an Indictment of Barretry, without a special Commission. 2 *Cro.* 32.

A Justice in open Court may alter the Pannel of a Jury sworn only for the King. 2 *Co.* 59.

One Justice of the Peace is sufficient to certify carrying of Corn from one Place to another to sell, against the Statute of Forestalling, joined with the Customer.

He may bind a Cheat to his Good Behaviour, &c. *Dalt.* 63. 7 *Jac.* 1.

He may seize the Goods of *Gipseys*, within a Month after their Arrival, &c. by the 22 *Hen.* 8. c. 10.

He may prevent a Riot, and commit the Offenders; he may also record a Riot in his View, and commit the Rioters, or bind them to their Good Behaviour; but single, or alone, proceed no further. *Dalt.* 195.

He may punish Spoilers of Fish-ponds, and cause their Nets to be cut and burnt. 17 *Rich.* 2.

He may take the Claim of a Horse stolen. 31 *Eliz.* 12:

He may examine and bind over unlawful Hunters in the Night-time, &c. 1 *Hen.* 7. c. 7. The like of taking or killing Conies in the Night-time. 22 & 23 *Car.* 1.

He may order Penalties to be levied of Persons killing Game unlawfully: And of Higlers, Chapmen, &c. having Hare, Pheasant, Partridge, &c. in their Custody. *Stat.* 4 & 5 *W. & M.* 5 *Ann.*

He is to levy Penalties of Deer-stealers, viz. 20 *l.* for the Offence of Hunting, &c. and for every Deer taken or killed 30 *l.* and grant Warrants to Constables to search for stolen Venison. 3 & 4 *W. & M.* See *Stat.* 5 *Geo.*

A Justice by his Warrant to cause to be levied the Penalty of 12 *l.* on Hawkers, Pedlars, &c. trading without Licence; and 5 *l.* for not producing it when demanded. 9 *W.* 3.

He may punish Makers and Throwers of Squibs, Rockets, &c. the Makers and Sellers forfeit 5 *l.* and the Persons throwing them 20 *s.* *Stat.* 9 & 10 *W.* 3.

He may also punish Hackney-Coachmen (in London) refusing to go for their Fare. 9 *Ann.*

He may levy Penalties of Surveyors of the Highways, for not presenting Defects, &c. And of Carriers travelling with more Horses than allowed. 4 *W. & M.* 6 *Ann.* And also Penalties for not sweeping the Streets for Scavengers, &c.

He

and their Clerks.

9

He is to see that Poor, receiving Relief, wear Badges. 9 *W.* 3.

He is to appoint Watches to prevent Persons coming on Shore, performing their Quarentine.

He may take Information of Blasphemy. 9 & 10 *W.* 3.

He is to punish Vagrants, send them away by Pass, &c. 12 *Ann.*

He is also to punish Persons selling Ale in unlawful Measures, and not marked, &c. And Bakers selling their Bread under Weight, faulty Bread, &c. 11 & 12 *W.* 3. 8 *Ann.*

One Justice may apprehend Artificers going to leave the Kingdom. 5 *Geo.*

He may punish Taylors making Cloaths with Cloth-Buttons, or Cloth Button-Holes, &c. which incurs a Penalty of 40 s. a Dozen. *Stat.* 4 *Geo.* c. 7.

He may compel a Vintner to draw a Man Wine who demands it, and offers Payment. *Dalt.* 242.

He may convict of the Breach of the Lord's-Day, against *Stat.* 29 *Car.* 2. And may allow of Cause for travelling in a Boat on the Lord's-Day, according to the said Statute.

C H A P. IV.

The Power of Two Justices of the Peace, acting jointly within their Jurisdiction, by Vertue of their Commission and Office.

TWO Justices of the Peace, upon View of a Riot, or Rout, may record the same, and with the Sheriff, or Under-Sheriff. 13 *Hen.* 4. c. 7.

B 5

Crompt.

Crompt. 16. *Num.* 9. to inquire by a Jury, and fine the Rioters. *Dalt.* 195. *Quare.*

Two Justices, on Complaint that a Servant departed before his Term ended, &c. are to examine, and commit if they see Cause. See more of Labourers and Servants under Constable, &c.

They may bind one to the Quarter-Sessions, to answer his Offence against a Penal-Law. *Lamb.* 187. *Vide Dalt.*

They may allow and discharge an Alehouse-keeper at Discretion.

There must be Two Justices of the Peace for appointing Overseers for Woollen-Cloth for a Year, &c. So to convene Persons fit to discover any Offence in making deceitful Cloth.

They may imprison for a Year, or less, at their Discretion, Servants for assaulting their Masters, may compel Women to serve for such Wages and Manner as they think fit. They may tax a Hundred towards the Relief of the Poor of a Town within it, wherein the Inhabitants are thereby overcharged, and not able to keep their Poor; and they may tax others of a County for the Relief of Places infected.

They may assess all Parishes within the Hundred proportionably, towards Contribution for the Partics charged upon a Robbery.

They shall take Order to set poor Soldiers on Work who cannot get Work; for want of Work, tax the Hundred for Relief. 21 *Jac.* 1. c. 28.

Two Justices may fine the Head-Officers in Boroughs and Market-Towns, who are remiss in viewing the Weights and Measures, and break and burn those that are defective; and fine all Buyers and Sellers with unlawful Weights at Discretion.

They

and their Clerks.

11

They may allow Surveyors, and their Servants, to make Materials in another Parish for the mending the Highways where they are defective.

Two Justices, one being of the *Quorum*, upon Complaint of the Churchwardens, may convene before them the Bailiff and High-Constables, and take their Accounts of Forfeitures and Defaults estreated concetning Highways.

Two Justices of the Peace in *London*, may determine the Matter of Buildings, and Inhabitants there. 35 *Eliz. c. 6.*

They shall allow Scavengers under their Hands to confirm a Tax of Constables, Churchwardens, and Surveyors, &c.

Two Justices of the Peace may take an Oath of the Under-Sheriff, Bailiffs of Franchises, &c.

Two Justices of the Peace, one being of the *Quorum*, may commit any Person under the Degree of a Baron, being above 18 Years of Age, for refusing to take the Oath of Allegiance, &c.

They may take the Submission of Persons brought up in a Jesuits College.

They may, one being of the *Quorum*, bail a Person arrested for Manslaughter, Felony, or on Suspicion of them.

They may take Order about a Bastard-Child laid in the Parish. 18 *Eliz. 7 Jac. 1. &c.*

They may punish Destroyers of the King's Game, or such as keep hunting Dogs. 1 *Jac. 1. 27. 7 Jac. 1. 11.*

They may sign a Testimonial of a Servant turned out of Place, or one whose Master is dead. 27 *Eliz. c. 11. Lamb. 331.*

Two Justices may convict any one of opposing the Execution of the Statute against Planting Tobacco in *England*, and convict Refusers to assist, &c. 12 & 13 *Car. 2. Dalt. 237.*

They

They may license poor People diseased to travel to the *Bath* for Remedy, &c. 39. *Eliz.* 4.

They may send to a Work House, Prisoners brought before them by *Habeas Corpus*, according to 30 *Car.* 2.

Two Justices, one of the *Quorum*, may take an Indictment and Inquisition. *Lamb.* 48.

Two Justices of the Peace may warrant Constables in searching Houses for Setting-Dogs, and Nets for taking Partridges. 7 *Jac.* 1. c. 11.

They may commit for 3 Months, Shooters of Partridges contrary to 1 *Jac.* 1. c. 27. unless each so offending pay 20 s. They may proceed upon Offences against the 13 *Eliz.* of Hedge-breaking, &c. done to one of them. They may examine Offenders in Buck-stalls against the 19 *H.* 7.

Two Justices of the Peace, with the Bishop and Chancellor, may call Collectors of Hospitals to Account for Corruption. 14 *Eliz.*

They may search for Popish Books and Relicks. 3 *Jac.* 1. c. 5. They may punish Defaults in the Overseers of the Poor.

They may punish Offenders in disturbing the Execution of the Statute against Rogues.

They may send to the House of Correction Persons about to leave their Family to the Parish. 7 *Jac.* 1. c. 4.

They may by Warrant cause the Churchwardens and Overseers to levy Arrears of the Rates for the Poor.

Two Justices of the Peace, one being of the *Quorum*, may reform Neglects of Clerks of the Market, &c. *Dalt.* 251.

Two Justices of the Peace to convict of not reading Common-Prayer. 14 *Car.* 2. c. 14.

They may disarm Papists; and commit Persons concealing their Armour. 1 *W. & M.*

Upon

Upon Complaint, to summon Parties, and determine Dues for small Tithes. 7 & 8 W. 3. They may likewise order Sums under 5 l. to be paid for Postage of Letters. 9 Ann.

They may determine Wages due to, and Defaults of Labourers in the Woollen, Linen, and Iron Manufactures. 1 Ann.

To levy the Penalty of 50 l. on Workmen building Houses without Party-Walls of Brick and Stone, of a certain Thickness. 6 Ann.

Two Justices are to allow Certificates of a poor Person's removing to another Parish: Levy 10 l. on Persons refusing to take poor Apprentices, &c. And to consent to the Binding poor Boys Apprentice to the Sea-Service; punish Masters of Ships refusing them, &c. 8 & 9 W. 3.

They are to set the Prices, and ascertain the Weight and Goodness of Bread. To punish Brewers, &c. fitting up Tuns, Coolers, without giving Notice at the Office of Excise, &c. Penalty 50 l. And to punish Offences of Distillers. 1 W. & M.

To punish Offences relating to the Highways; nominate Surveyors; order Rates, &c. 3 & 4 W. & M. 1 Geo.

They may punish Persons having in their Houses a greater Quantity of Gunpowder than allow'd by Law, in the Cities of London and Westminster, &c. Stat. 5 Geo.

They may bind over to the Assizes, or Sessions, one suspected of Deceit, by counterfeit Letters, and proceed in like Nature in some other Matters of lesser Moment; and for many Things more fully set down and explained. *Vide* the Offices of Constable, Churchwarden, Overseer of the Poor, Surveyors, &c.

CHAP. V.

What may be done by Three Justices of the Peace, conjoint in the Execution of their Office, according to several Statutes, &c. empowering and directing them thereto.

THree Justices of the Peace may call unto Examination before them the bestowing of Money in mending the Highways, by the Statute for mending Highways, or Bridges. 14 *El.* 4. 30 *Eliz.* 18.

They may take the Oaths of two Witnesses of depraving the Sacrament. 1 *Ed.* 6. 1.

They may license under their Seals, one of them being of the *Quorum*, Badgers and Drovers. 5 *Eliz.* 12.

They may confirm By-Laws in *Norfolk* for *Norwich* Stuffs, with others, &c.

They may consent to a Petition to the King or Parliament. 13 *Car.* 2. 5.

They, with the Bishop and his Chancellor, may examine the employing the Poor's Money, &c. 14 *Eliz.* c. 5. 39 *Eliz.* c. 10.

They may, one of them being of the *Quorum*, take Examination of those that maim Horses, Cattle, or that destroy Nurseries, or other young Trees, and throw down Inclosures in the Night unlawfully, &c.

They may license buying of Corn to carry from one Port to another. 5 *Eliz.* 12.

They are to settle Gaolers Fees for Commitment, Discharge, Chamber-Rent, &c. (except in *London*) 2 *Car.* 2. c. 20.

Adjust Rewards for assisting in relieving Ships from Wreck, 12 *Ann.*

CHAP.

C H A P. VI.

What may be done by four or five Justices of the Peace, conjunct in the Execution of their Office, as aforesaid, &c.

FOUR Justices of the Peace may discharge, under Seal, an Apprentice hardly and ill-used. 5 *Eliz. Dalt.* 120.

They may tax the Inhabitants, and make Collectors and Overseers for the repairing a Bridge, where it is not known who ought to repair it. 22 *Hen. 8. c. 5.*

They may seize a Recusant's Arms, Armour, and Ammunition, &c. 3 *Jac. 1. c. 5.*

They may consent with the Sheriff, or Gaoler for the removing of sick Persons that are Prisoners, or others. 19 *Car. 2. c. 4.*

They may license a Recusant to travel above 5 Miles with the Assent of the Bishop, or Lieutenant, &c. 35 *Eliz. 3 Jac. c. 5.*

They may remand, by Warrant under Seal, Malefactors flying into *England.* 7 *Jac. 1. c. 1. Dalt.* 541. And indeed thus conjunct they have great Power in the Execution of the Office of the Peace, where Matters lie within their Jurisdiction.

Five Justices may order enlarging of Highways, so as the Ground taken in do not exceed 8 Yards; nor any House be pulled down, Garden, &c. taken away; for which Satisfaction must be made, &c. *Stat. 8 & 9 W. 3. c. 16.*

C H A P. VII.

What six Justices of the Peace, conjunct in the Execution of their Office, may do, &c.

SIX Justices, one being of the *Quorum*, may execute the Laws of Commissioners of the Sewers. *Dalt.* 219.

They may appoint a common Gaol for the Sheriff to have the Custody of it. 13 *Hen.* 8. And there must be six Justices in Commission of the Peace, with the Justices of Assize, by 12 *Rich.* 2. c. 1.

The greatest Part of the Justices of the Peace to order the Houses of Correction in every County.

The greatest Part to tax other Parishes for the Poor, where there is an Insufficiency in the Parish or Hundred. 43 *Eliz.* c. 2. So to employ the Overplus of the maimed Soldiers Stock to the Use of the Poor. 43 *Eliz.* c. 3. and to tax for the Relief of maimed Soldiers. So to Accounts of Treasurers for maimed Soldiers 43. *Eliz.* c. 3.

There are to be 8 Justices of Peace, besides Lords, and 2 Lawyers in every County. 18 *Ed.* 3.

C H A P. VIII.

Of what Justices of the Peace may do in their Quarter-Sessions.

THEY may punish Alehouse-keepers selling Ale without Licence, &c. *Stat.* 4 *Jac.* 1. c. 4.

Badgers

Badgers of Corn, &c. are to be licensed in the Sessions, (by at least 3 Justices) under the Penalty of 5 l. 5 *Eliz. c. 12.*

Justices in Sessions may restrain Retailers of Butter and Cheefe: Examine into corrupt Butter; the Size and Weight of Casks, &c. 13 & 14 *Car. 2.*

They are to examine whether Butchers in *London* or *Westminster*, buy fat Cattle, and sell them again to another Butcher there, &c. the Penalty whereof is Forfeiture of the Cattle. *Stat. 22 & 23 Car. 2. c. 19.*

They may assess towards Repair of Bridges, on every Town, Parish, &c. 1 *Ann. c. 18.*

Persons convicted of Absence from Church, (Recusants) they may commit till they conform: And levy 200 Marks on Persons saying or singing Mass; also 100 Marks on the Hearers of Mass; imprison them, &c. *Stat. 23 Eliz. c. 1.*

In the Sessions Offences of Curriers, Tanners, and Shoemakers, as to the Insufficiency of Leather, &c. are to be enquired into: And Penalties levied. 1 *Jac. 1. c. 22.*

Justices in their Sessions are to levy Penalties for building Cottages without four Acres of Land. (*viz.* 10 l. and 40 s. a Month) 31 *Eliz. c. 7.*

Also 20 l. of Persons using any Engine for stretching of Cloth, &c. *Stat. 39 Eliz. c. 20.*

They are to examine whether Owners of Fairs and Markets appoint Toll-takers, Book-keepers, &c. who are to enter Accounts of Horses sold, &c. 2 & 3 *Ph. & Mar.*

They are to punish unlawful Hunters in Forests, Parks, Warrens, &c. Destroyers of Partridges, Pheasants, Hare, and other Game: Destroyers of Fish out of Season, under Size, &c. And Persons breaking down Fish-ponds. 11 *H. 7. 5.* and 23 *Eliz. &c.*

To

To punish Forestallers and Ingrossers of Victuals, &c. by Imprisonment, &c. 5 & 6 Ed. 6. 13 El.

Also to levy Penalties of Malsters employing less Time in making their Malt than they ought: And the Sessions may restrain the Number of Malsters. 2 & 3 Ed. 6. 39 Eliz.

Perjury is punish'd by the Quarter-Sessions; by a Fine of 20*l.* Imprisonment, Pillory, &c. And suborning a Witness to give Testimony, is liable to a Penalty of 40*l.* Imprisonment, Pillory, and Disability to be an Evidence. Stat. 5 Eliz. c. 9.

In the Sessions Justices are to rate Parishes for Relief of the Poor; Relief of Prisoners in Gaol, &c. 43 Eliz.

To punish Publishers of false Prophecies, (10*l.* Penalty and a Year's Imprisonment) Stat. 5 Eliz. c. 15.

To set the Prices of Salt, determine Grievances, &c. 9 & 10 W. 3.

To examine Accounts of Soldiers listed to serve in the Wars; appoint the Payment of Soldiers in their Quarters, &c. Stat. 2 & 3 Ann.

To appoint the Rates for passing of Vagrants: To raise Money for the passing them; and see it applied: Order Rogues to be whipt and committed to the House of Correction; or send them to the Plantations, &c. Stat. 12 Ann.

See Constable.

C H A P. IX.

Of certain Forfeitures by Statute given to Justices of the Peace.

FOR every Day a Justice sits upon the Statute of Labourers, not exceeding 3 Days, 5 s. So the Mayor, or Head-Officer in Corporations, &c. out of the Fines arising on the Stat. &c.

For every Day which Sessions is kept, which may be 3 Days, they shall have out of the Fines coming to the Sheriff's Hands, by reason of the Sessions, 4 s. and their Clerk, 2 s.

Two Justices of the Peace shall have a Part of defective Cloth seized and forfeited. 5 Edw. 6. Lam. 359.

Justices who examine Offences of Deer-Hays, and Buck-Stalls, shall have the tenth Part of Forfeitures. 19 Hen, 7. c. 11.

C H A P. X.

The Fees of Justices of the Peace, or such as they ought to take in the following Cases, according to Crompt. 139. a. and Dalt. 78.

FOR a Recognizance of the Peace, 2 s.

For a Recognizance to bail a Prisoner, 2 s.

For a Superfedeas of the Peace, 2 s.

For a Warrant of the Peace sealed, 2 s.

For a Release of the Peace, 2 s.

For a Warrant not of the Peace, 4 d.

For a Recognizance of an Alehouse keeper, 12 d.

For

For the Inrolment of a Deed, the Land not exceeding 40 *s. per Annum*: To the Justice 1 *s.* and to his Clerk 1 *s.* But if the Land exceed 40 *s.* then 2 *s.* 6 *d.* to the Justice, and the-like to his Clerk.

C H A P. XI.

Where a Justice of the Peace lies liable to be fined for neglecting or transgressing in his Office or Duty, &c.

IN the Case of bailing one not bailable, and refusing to bail one bailable, and detaining him, he lies liable to a Fine, and to pay Satisfaction to the Prisoner. 3 *Edw. 1. c. 15.* 23 *Hen. 6. c. 10.*

In the Statute against Riots, if he does not execute it, he is finable 100 *l.* 13 *Hen. 4.* So in that of Forcible Entry 10 *l.* 8 *Hen. 6.*

In neglecting to take Order about a House of Correction 5 *l.* to go towards the building it. 1 *Jac. 1. c. 4.*

Exercising his Office before the Oath taken. *Dalt. 14.* For not being present at the Annual Tax of Servants Wages, 10 *l.* 5 *Eliz. c. 4.*

If a Justice of the Peace does not in 40 Days certifie unto the King's Bench, Presentments of extolling the Pope's Power, he forfeits 100 *l.* 5 *Eliz. c. 1.*

For imbezilling, wilfully raising, maliciously inrolling an Indictment not found, changing an Indictment of Trespass into Felony, is Fine and Imprisonment, and Loss of Office. *Lam. 631.*

C H A P. XII.

Where a Justice of the Peace lies liable to Punishment.

HE may be imprisoned for taking Bond in his own Name, and not in the King's, the Matter concerning the King. 33 H. 8. c. 9.

For conspiring with another to indict a Stranger at the Sessions, otherwise as a Thing done by him as Judge. *Crompt. 122. a. Num. 32.*

Where a Justice fails to do Justice, he may be put out of Commission and punished. 4 Hen 7. c. 12. *Crompt. 120. H. Num. 6. Lam. 370.* So for refusing to take Surety for the Peace when it is tender'd. *Vide Crompt. Jurisdiction of Courts. 31 b.*

For embezzling and rasing Records, he forfeits his Office, and may be fined. *Vide antea.*

C H A P. XIII.

Some Directions in making out Warrants by a Justice of Peace, and how to be executed: Also of the Sessions of the Peace.

A Warrant in Writing must be under the Justice's Hand and Seal, his Hand at least. *Dalt. 460. Lamb. 85, 88.* However it is better if it be sealed, as the usual Way is. *Dalt. 460.*

A Warrant of the Peace, or Good Behaviour, must contain the Special Matter. *Dalt. 460. Lamb. 87.*

A Warrant for Treason, Murder, or such like capital Offence, need not contain the special Matter or Cause. *Dalt. 160. Crompt. 148. a.*

If

If a Justice of the Peace, being out of the County, grants his Warrant to be served in the County, the Officer making the Arrest, must carry the Party before some Justice of the Peace within the County. *Lamb.* 91. *Dalt.* 461.

A Justice of the Peace, (especially of the *Quorum*) may make his Warrant to come before himself; yet in a Warrant for the Peace, the usual Manner is otherways. *Cro.* 5. 59. *Dalt.* 461.

Upon a general Warrant, an Officer may chuse to go before what Justice he pleases. *Dalt.* 49. 1 *Cro.* 52. *b.*

If a Justice of the Peace make a Warrant beyond his Authority, it is not disputable by a Constable, or other Officer, but must be obeyed, unless it be to do a Thing out of the Justice's Jurisdiction in a Cause where there is no Judge; for if in this latter Case the Officer execute the Warrant, he is punishable. *Dalt.* 8. 465. *Lamb.* 65. *Crompt.* 147. *b.* *Lamb.* 91, 92. *Dalt.* 865.

A Warrant directed to two jointly to arrest a Party, he may be arrested by either of them.

See more of Warrants in the Office of Constable in this Book, and how they are to be executed.

Sessions held by one Justice of the Peace is not good, though it were summoned by two, and stiled by their Names; but two sufficient Justices Warrants sealed. (*Quorum*, &c.) *Vide Dalt.* &c.

Quarter-Sessions are to be held 4 Times in the Year, *viz.* The first Week after St. Michael, the Epiphany, the Close of Easter, and after the Translation of Thomas the Martyr, which is July 7. 2 *Hen.* 5. *c.* *Lamb.* 597. *Dalt.* 531.

Justices of the Peace shall hold their Sessions 4 Times in the Year, *viz.* One within the Octaves of Epiphany, the second in the second Week of Lent,

Lent, the third between the Feasts of *Pentecost* and *St. John Baptist*, the fourth within the *Octaves* of *St. Michael*. 36 *Edw. 3. 1. c. 12. Dalt. 531. Grompt. 123. B. Num. 15, &c.*

The Place where Sessions is to be held is arbitrable, and therefore though by Summons they are to be kept in one Place, yet they may be kept in another, but then there can be no Amercement for Default of Appearance. *Lamb. 383, 384.* But they must be kept within the County. *Dalt. 531.*

So in a Town-Corporate, but not to intermeddle.

Two Sessions at one Time for one County lawfully summoned at two Places are good, but Appearance at one shall excuse the Default of Appearance at the other, and Presentment taken before either of them shall stand good. *Lamb. 384.* but punishable without Notice.

At a General Sessions, all Matters enquirable by Justices of the Peace, either by Statute or their Commission, ought to be given in Charge, otherwise at Special Sessions. *Lamb. 613.* And may be held 3 Days. *Lamb. 606. 12 R. 2. c. 10.*

At the Quarter-Sessions, Officers and Ministers of the Court, and Jurors of the County, owe their Attendance. *Lam. 386.*

Jurors not appearing according to Summons, are punishable for Loss of Issues, the usual Part of *Estreats*.

Constables making Default, are fineable.

The Justices of the Peace, if need require, may keep a Special Sessions by Vertue of their Commission, or by the Statute, 1 *Hen. 5. c. 4. Lamb. 623.*

All Matters within the Commission or Statute, may, at a Special Sessions of the Peace, be given in Charge; yet they are at liberty to give in Charge,

Charge, either all, or any of them. *Lamb.* 623, 624.

If two Justices of the Peace, one being of the *Quorum*, make a Precept to the Sheriff for the holding a Sessions at such a Place and Day, and to return a Jury before them, other Justices cannot by their Superfedeas inhibit it. *Crompt.* 126. B. But the King by his Writ of Superfedeas may discharge it. *Ibid.*

All that come to the Sessions for publick Service, or upon Compulsion, upon Complaint and Examination of the Matter upon Oath, shall be freed from any Arrest upon original Process. *Cro* 190 B *Lamb.* 402.

Indictments are many Times tried the same Sessions wherein the Persons were indicted; yea, the same Day before Justices of Gaol-Delivery, or Justices of Oyer. &c. *Dalt* 537. 1 *Cro* 315, 438 448.

But in case of Felony, it seems very reasonable to be deferred to the next Sessions, upon Cause shewn; it being so in an Indictment of Nuisance generally, and Life is more to be valued and favoured, &c. *Dalt.* 537.

Many Things of great Import cannot be done, but at the Sessions, and some but at such a particular Sessions. *Dalt.* 537.

Of the first Sort, are the Discharge of Apprentices ill-used, Badgers licensed, Officers sworn (after the Sacrament received, proved) and declaring against Transubstantiation, &c. *Dalt.* 538.

The second is taking Account for maimed Soldiers of the Treasurers, and for charitable Uses. &c. 43 *Eliz.* in *Easter* Sessions; the Rates of Wages in *Easter* Sessions, and six Weeks after. *Dalt.* 538.

Making Order in the Chamber after the Adjournment of the Sessions, as for the Bastard-Children and Settlements, and some other Things and Matters. But not to be tedious to the Reader, I shall here close treating of Matters of this Kind, and proceed to others executed.

CHAP. XIV.

Of Mittimus's and their Form, and what is to be considered in them, &c.

A *Mittimus* must contain the Name of the Party or Parties, his or their Offences, and the Time of Imprisonment, that it may appear whether the Prisoner be bailable or not. *Lamb.* 297. *Dalt.* 439, 406, *Crompt.* 153. *A. Num.* 11.

If one be committed without Bail or Mainprise, and the Cause be expressed in the *Mittimus*, and yet is bailable, other Justices may bail him; yet *Quare*, seeing their Authority is equal. *Dalt.* 439. But if no Cause be expressed, other Justices shall not do well to bail him without the Privity of the first Justice or Justices, because the Cause of Commitment probably may not be bailable. *Dalt.* 439.

If the *Mittimus* be general, the other Justices that bail must take Notice at their Peril. *Ibid.*

The Form of the Mittimus: see,

To send Rioters to Gaol, *Lamb.* 321. To Shooters in Pieces to Gaol. *Lamb.* 229. *Dalt.* 515. To send upon Forcible Entry &c. *Lamb.* 150, 510. To send to the House of Correction. *Dalt.*

513. To send an Ale-seller without Licence.
Dalt. 512. To send a reputed Father of a Bastard. *Ibid.*

CHAP. XV.

Of Recognizances; what they are, and how, and in what Cases to be taken by a Justice of the Peace, &c.

A Recognizance is a Bond of Record, testifying the Recognizor to owe a certain Sum of Money to some other, and that Acknowledgment of the Sum is to remain of Record; and none can lawfully take it, but a Judge or Officer of Record. *Dalt.* 457.

Every Recognizance taken by a Justice of the Peace must be made by these Words, *Domini Regis*; and great Care to be had in so doing, for it is Imprisonment for any Person to take it otherwise. 33 *Hen. 8. c. 9. Crompt.* 196. *B. Num.* 11. *Lamb* 162. *Dalt.* 276.

Sureties in Recognizance ought to be Subsidy-Men, and they must be two besides the Party himself. *Dalt.* 276 *Lamb.* 101.

It is in the Discretion of a Justice of the Peace, if he take a Recognizance *Ex Officio*, to appoint the Number of the Sureties, their Sufficiency in their Goods and Lands, and the Sum of Money, and how long the Party shall be bound. *Dalt.* 275. *Lamb* 100.

Recognizance for the Peace, unless the Words be express'd for keeping of the Peace, seemeth void. *Lamb.* 103. *Dalt.* 264, 276. *Coram non Judice.*

So it is if a Recognizance be, that the Recognizor shall not beat or maim *B* without the expressing the keeping the Peace in it. *Ibid.* **A**

A Recognizance expressing no Time of Appearance, but generally to keep the Peace, is good. *Ibid*, And so these few may serve to give a Light into others, for they are many; and in the main they tend to one and the same Thing.

CHAP. VI.

The Justice of Peace his Clerk, &c. His Business relating to Warrants, Hue and Cry, Order for Bastard-Children, Recognizances, Mittimus's, Releases, Bailments, Superfedeas, &c. in due Form, Latin and English, and other Things; with Observations or Notes thereon, for better Information.

AS for Warrants granted by Justices of the Peace, they may be styled and made after several Manners, *viz.*

1st, In the Name of the King, and yet the *Teste* may be under the Name of the Justice or Justices of the Peace who grant them.

2^{dly}. Or they may be styled and made only by the Name of the Justices so granting.

3^{dly}. Or else be made without any such Style, and only under the *Teste* of the Justice of Peace, or only subscribed by the Justice, as the Cause requires: But not having Room for every Particular the Nature of Things in this Case requires in so small a Book, I shall only set down what are most common and useful in their Order.

The Form of a general Warrant for a Misdemeanor.

Bucks. **T**O the Constables of D. &c. in the said County, and to every of them. These are to will and require you, and in His Majesty's
C 2 Name,

Name, straitly to charge and command you, upon Sight hereof, to attach, and forthwith bring before me the Body of J. P. Baker, to answer such Matters of Misdemeanour in His Majesty's Behalf, as shall be objected against him: And hereof fail not at your Peril. Given under my Hand, &c. (or) Dated, &c.

The Form of a Warrant for the good Behaviour.

Bucks. To the Constable, &c.

FOrasmuch as A. B. of your said Town is not of good Fame, nor of honest Conversation; a Rioter and Disturber of the Peace of our Sovereign Lord the King, as we are given to understand by the Complaint of several credible Persons: Therefore on the Behalf of our Sovereign Lord the King, we straitly charge and command you, or either of you, immediately upon Sight hereof, that you, or one of you, require the said A. B. to come before me, or some other of His Majesty's Justices of the Peace, to find sufficient Sureties and Mainprize, as well for his good Abearing towards our Sovereign Lord and all His Liege People, until the next Quarter-Sessions to be holden in the said County, as also for his Appearance then and there; and if he shall refuse so to do, that then you him safely convey, or cause to be conveyed, to the common Gaol of the Countrey aforesaid, or to the next Gaol of His Majesty's in the said County, there to remain until he shall willingly do the same; so that he may be brought before the Justices of the Peace of our said Sovereign Lord the King within the said County, at the next General Sessions of the Peace to be holden for the County, and there

to answer our said Sovereign Lord for his Contempt on this Behalf. And see that you certify your Doings in the Premisses to the said Justices in the said Sessions, bringing then thither this Precept with you. Given at *B* under my Hand and Seal, the fourth Day of *Decemb.* 3 c.

The Form of a Warrant for the Peace.

Surrey. To the Constables of *C.* &c. and to either of them.

FOrasmuch as *A. B.* of your said Town, Yeoman, hath required Sureties of the Peace against *T. L.* of your said Town, Labourer, and withal hath taken his corporal Oath before me, That he requireth the same not for any private Hatred or evil Will, but that he is afraid of his Life, or the hurting or maiming his Body, or the burning of his Houses: These are therefore in His Majesty's Name, straitly to charge and command you, that immediately upon the Sight hereof, you, or one of you, require the said *T. L.* to come before me, or some other of His Majesty's Justices of the Peace within the said County, to find sufficient Sureties, as well for his Appearance at the next Quarter Sessions, &c. to be holden for this County; as also that the said *T. L.* shall in the mean Time keep the Peace, as well towards His Majesty, as towards all People, and especially towards the said *A. B.* and that if he shall refuse so to do, that then you do immediately convey the said *T. L.* to the common Gaol of the said County, there to remain until he shall be willing to do the same, and see that you certify your Doings in the Premisses to the Justices of the said Sessions, and have there this Warrant. Dated at, &c.

C H A P. XVIII.

The Form of a Warrant to search for stolen Goods.

Com. Surrey. To the Constables of R. &c. and to either of them.

WHereas Complaint hath been made to me W. C. Esq; one of the Justices of the said County, by L. G. of C. That upon *Tuesday* Night last he had feloniously taken from him certain Goods, [*Here name them :*] And that he is given to understand, that there are divers Parcels of such Goods in the Hands or Houses of divers suspected Persons within your Town. These are to will and require you, and in His Majesty's Name to charge and command you, that immediately upon the Receipt hereof you make diligent Search in all and every such suspected Houses and Places within your Town and Parish, as you and this Complainant shall think convenient ; and if upon your said Search, you find any of the said Goods, or any other just Cause of Suspicion, that then you bring all such suspected Persons as you shall find, together with the said Goods, before me, or some other of His Majesty's Justices of the Peace for the said County, to make Answer thereunto ; and hereof fail not at your Peril. *Dated, &c.*

The Form of a Warrant to search after a Robbery committed, directed to the High Constables.

WHereas there have been of late many Robberies committed about D. Now for the better finding out such lewd Persons, we whose
Names

Names are hereunder-written, being His Majesty's Justices of the Peace for the County of *Middlesex*, have thought fit, and do hereby will and require you, in His Majesty's Name, that forthwith you direct your Precepts to every Petty-Constable within your several Hundreds, commanding them to make Search in all Inns, Alehouses, and other suspected Houses within your Precincts, for all such Persons as are idle, vagrant, wandering Rogues, Beggars, and other Persons: And further, that they the Petty-Constables within the Precincts, do take the Examination and Account of all those, and such other Persons as be common Alehouse-haunters, or which expend their Money in Riot, or which do not labour for their Living, and have not wherewith to maintain them; and that the same Searches be holden all over your Hundreds the same Night, and at such other several Times as in your Discretions shall seem meet. And if any such Persons shall be found in the same Searches, and that upon yours or the Petty-Constables Examination taken of them, or any of them, there shall be found any Cause of Suspicion in them; or any of them, that then they bring the said Persons so suspected before us, or some one of us, or some other of the Justices of the Peace of this County, to be further examined in the said Causes, and to be further dealt withal according to Law and Justice. And for the better doing hereof, we require you to command, in His Majesty's Name, That every Petty-Constable, within their respective Precincts, do require and charge two chief discreet Headboroughs in every Parish to assist the Petty-Constable in this Service: and hereof fail not at your Peril, &c. Dated, &c.

The Form of a Warrant for a Person who had dangerously hurt or wounded another, &c.

Surrey. To the Constables of C. &c.

FOrasmuch as I am credibly informed, That C. G. of your Town, Carpenter, hath now, or lately, dangerously hurt or wounded one G. F. of your said Town, Bricklayer, by a Blow, or Blows, which he hath given to the said G. F. on the Face and Head, &c. so that the said G. F. is in Danger of Death thereby: These are therefore in His Majesty's Name, to charge and command you, that immediately upon Sight herof, you, or one of you, do bring the said C. G. before me, or some other of His Majesty's Justices of the Peace of this County, to find sufficient Sureties, as well for his Appearance before His Majesty's Justices, at the next general Gaol-delivery to be holden for this County, then and there to answer unto the Premises, and to do and receive therefore that which by the Court shall be enjoined him; as also that he the said C. G. shall in the mean Time keep the Peace towards His said Majesty, and all His Liege People, and especially towards the said G. F. And hereof fail not at your Perils. Dated, &c.

The Form of a Warrant for a Reputed Father of a Bastard-Child.

Surrey. To the Constables of P. &c.

WHereas Complaint hath been made unto me L. G. one of His Majesty's Justices of the Peace for the said County, by M. G. of your Town, single Woman, that she is gotten with Child by R. B. also of your said Town, Barber.

ber. These are therefore to charge and command you, and either of you, that immediately upon Receipt hereof, you attach the Body of the said R. B. and thereupon bring him before me, or some other of His Majesty's Justices of the Peace for the said County, to find sufficient Sureties, as well for his Appearance at the next General Sessions of the Peace to be holden for this County, as also for his Good Behaviour towards His Majesty and all His Liege People in the mean Time. And hereof fail not, as you will answer the contrary at your Peril. Dated, &c.

C H A P. XIX.

An Order of the Justices of Peace for a Bastard-Child.

THE Order of L. C. and R. G. Esq; two of His Majesty's Justices of the Peace for the County of S. made for the Relief of the Parish of C. in the said County, for the keeping of & a Bastard-Child, begotten by R. B. of C. &c. on the Body of M. G. &c.

Imprimis. Upon the Examination of the said M. G. duly by us taken, we do find that the said R. B. is charged to have several Times had carnal Knowledge of the Body of, &c. between such Times, (*Here name the Times*) and to be the only Father of the said Bastard-Child, &c. And therefore we do order and adjudge him the said R. B. to be the Reputed Father of the said Child.

We do further order as followeth :

First, That the said M. G. shall keep her said Child till it comes to 8 Years of Age.

Secondly, That the said R. B. upon Notice of this Order, shall, after such Notice, pay unto the

A Help to Justices,

Hands of one of the Overseers of the Poor of C. for the Time being, after the Rate of 2 s. 6 d. every Week, to be paid Monthly every Year towards the Relief of the said Child, until it come to 8 Years of Age.

Thirdly, That after the said Child shall come to the Age of 8 Years, &c. that the said R. B. pay to the Overseers, &c. five Pounds towards putting out the said Child to be an Apprentice, &c.

Fourthly, That the said R. B. presently give good Security to one of the Overseers, &c. to perform this our Order.

Note, That by altering the Names, and Sum, as the Order in that Case shall be made; this Order in Form, with the Variation of the Town and County, may generally serve on this Occasion.

The Form of a Warrant for a Fugitive-Servant.

Middlesex. To the Sheriffs, &c.

WHereas G. C. being lawfully retained in Service with M. B. of D. &c. is departed from his said Master's Service before the End of his Term, without his Master's Leave or Licence, (or without any reasonable Cause) contrary to the Laws and Statutes of the Realm in this Behalf provided. These are therefore to command you, and every of you, that you, or some of you, do attach the Body of the said G. C. and bring him before me, or some other of His Majesty's Justices of the Peace, to find sufficient Sureties, well and faithfully to serve his said Master, according to the Covenant between them made; and if he shall refuse

refuse thus to do, that then you cause him to be conveyed safely to the common Gaol of the County aforesaid, there to remain till he shall be willing to do the same; and see you certify such your Doings at the General Quarter-Sessions of the Peace to be held for the said County. Given under the Hand of me *W. S.* one of His Majesty's Justices of the Peace within the said County, &c.

Or thus: That if the said G. C. is willing his said Master to serve again, you do cause him to be delivered; and if that to do he shall refuse, that then you cause him to be conveyed to the Gaol, &c.

To bind one to give Evidence.

Surrey. To the Constables of B. &c.

THESE are in His Majesty's Name, to charge and command you, or either of you, that immediately, upon Sight hereof, you, or some of you, do cause to come before me, or some other of His Majesty's Justices of the Peace for the said County, the Persons hereunder-named; to the End that they, and every of them, may be bound to make their personal Appearance at the next general Gaol-Delivery (or Quarter-Sessions) to be holden for this County, then and there to testify their and every of their Knowledges, concerning certain felonious Acts committed by one C. D. now Prisoner in the *Marshal's Prison in Southwark*, the common Gaol for the County aforementioned; and hereof fail not at your Peril. Dated, &c.

The Form of a Hue and Cry after a Robbery, &c.

To all Constables, and other His Majesty's Officers, as well within the County of *Warwick*, as elsewhere within the Realm of *England*.

WHereas Complaint hath been made unto me *T. C.* one of His Majesty's Justices of the Peace within the County of *Warwick*, by *J. C.* of *D. &c.* Grasier, That upon *Wednesday* Night last, being the 17th of *October* instant, he was robbed of 100 *l.* by two Foot-Pads, on the Road or Highway between *D.* and *C.* in the Day-time, and hath Cause of Suspicion of *A. B.* and *C. B.* two lewd Rogues. [*Here describe their Persons and Apparel, setting down all such Marks as they may be known by.*] These are to require you, and every of you, to make Search within your several Precincts for the said *A. B.* and *C. B.* And also to make Hue and Cry after them from Town to Town, and County to County, and that as well with Horsemen as Footmen; and if you shall find them, the said *A. B.* and *C. B.* both, or either of them, that then you carry the Party or Parties so taken, before some one of the Justices of the Peace within the said County where he or they shall be taken, by him to be dealt with according to Law, &c.

The Form of a Warrant to attach a Felen for Felony.

Essex. To the Constables of *D. &c.*

FOasmuch as Complaint hath been made unto me by *W. W.* That of late he hath had certain Goods feloniously taken from him, and that he hath in Suspicion one *L. C.* of your said Town: These are therefore to will and require you, and in His Majesty's Name to command

mand you, and every of you, that immediately upon the Receipt hereof, you do attach the Body of the said L. G. and thereupon to bring him before me to answer the Premises; and hereof fail not at your Peril. Dated, &c.

C H A P. XX.

A Warrant for the Overseers of the Poor to give up their Accompts.

Surrey. To the High-Constable of the Hundred of B &c.

THESE are in His Majesty's Name to charge and command you forthwith to give Notice to the Churchwardens, and other Overseers of the Poor of every Parish within your Hundred, that they do personally appear before us at *Kingston upon Thames*, at the Sign of the *Swan*, on *Saturday* the 29th of *December* next coming, by 10 of the Clock in the Morning or Forenoon of the same Day, to yield up and make a true and perfect Accompt in Writing, subscribed with their Names or Marks, of all such Sums of Money as they have received, or rated and assessed, and not received, for and towards the Relief of the several Poor of their several Parishes; and also of such Stock (to set the Poor on work) as is in their Hands, or in the Hands of any of the said Poor, and of all other Things concerning the said Office; and hereof that they fail not at their and every of their Perils. And further we require you, That you give Warning to the Petty-Constables of every Town within your said Hundred, that they, or one of them, be also then present before us, to inform and certify us of the Names of such other Persons as

are meet and sitting to be Overseers of the Poor within their several Towns for this Year next ensuing ; and hereof fail not at your Peril.

✧ *Note*, That this Warrant must be under the Hands and Seals of two Justices at the least, the one to be of the *Quorum*.

The Form of a Warrant to distrain such as refuse to pay their Rates to the Poor, &c,

Warwick. To the Churchwardens and Overseers of the Poor within the Parish of K. and every of them.

FOrasmuch as we are credibly informed, [or, that it hath been duly proved before us] That the Persons hereunder-named do refuse to contribute or pay the Sums of Money hereunder-mentioned, being assessed and rated upon them severally, for and towards the necessary Relief of the Poor of your said Town, according to the Form of the Statute in that Behalf lately provided : These are therefore in His Majesty's Name to charge and command you, and every of you, forthwith to require the said Persons so refusing to appear before us, to shew Cause of their said Refusal ; and if they or any of them, shall refuse to come before us, that then immediately you do levy all and every the said Sums of Money unpaid, and all Arrearages thereof, of all and every the said Persons so refusing, by Distress and Sale of the Offenders Goods; you rendring to the said Parties the Overplus that shall remain upon the Sale of the said Goods, if any be ; and this shall be a sufficient Warrant for your so doing. Dated, &c.

C H A P. XXI.

The Form of a Warrant for suppressing an Alehouse.

Surrey. To the Constable, &c.

WHereas we are credibly informed, That *M. B.* of your Town, Victualler, is a Man of evil Behaviour, and doth suffer Disorders to be kept in his House, contrary to the Laws and Statutes of this Realm: These are therefore to will and command you forthwith to repair to the House of the said *M. B.* and to charge him to cease keeping any longer an Alehouse, and from common selling of Ale or Beer at his Peril; and withal, that you cause his Sign to be pulled down: And hereof fail not, as you and either of you will answer the contrary at your Peril. Given under our Hands and Seals at T. the — Day of ——— and in the ——— Year of our most gracious Sovereign Lord King *George*, &c.

But it is usual with the Justices ere they grant this last Warrant, or a Warrant to levy Monies forfeited by Alehouse-Haunters, to send for the Offenders and examine them of the Offence, that the Truth may be known, and that the Information be not upon the Account of Brangling or Malice between the Parties so informed against, and the Party informing, but the Truth known upon plain Conviction. Forfeitures in the latter Case may be levied, upon Refusal to pay, by Distress and Sale of Goods; and for want of such Distress, the Offenders set in the Stocks, &c. See more in the Office of a Constable in this Book.

C H A P.

C H A P. XXII.

*Of the Superfedeas granted by Justices of the Peace to
superfede Warrants, &c. their Forms.*

The Form of a Superfedeas by a Justice of Peace.

Suffex. **R.** D. Esquire, one of His Majesty's Justices of Peace within the County of *Suffex*, to the Sheriffs, Bailiffs, Constables, and other Ministers within the said County, and to every of them, sendeth Greeting. Forasmuch as *L. T.* of *C. Husbandman*, hath personally come before me at *D. &c.* and hath found sufficient Sureties, (that is to say, *W. C.* and *R. B. &c.* Yeomen, either of which hath undertaken for the said *L. T.* under the Pain of 20 *l.* and he the said *L. T.* hath undertaken for himself under the Pain of 40 *l.*) that he the said *L. T.* shall well and truly keep the Peace towards our Sovereign Lord the King, and his Liege People, and especially towards *R. M.* of, &c. and also that he shall personally appear before the Justices of the Peace, at the next General Sessions of the Peace to be holden for this County of *Suffex*: Therefore I command you and every of you, that you utterly forbear to arrest, attach, take, or imprison, or otherwise, by any Means for the said Occasion, to molest the said *L. T.* and if you have for the said Occasion, and no other, taken or imprisoned him, that then you do cause him to be delivered and set at Liberty without further Delay. Given at *D.* in the County aforesaid, under my Hand and Seal this 29th of *January*, &c.

✧ *Note*, A *Supersedeas* of this Nature is held good though the Sureties are not named, nor the Sum they are penally obliged in; yet it is better to express them both; for in such Case if it shall appear the Sureties are not sufficiently responsible, nor bound in sufficient Sums, better Sureties may be taken; and accordingly all the *Supersedeas*'s issuing out of the Court of Chancery, King's Bench, and Common Pleas, do mention the Names of the Sureties, and the Sums they are obliged in for the Delinquents Forthcoming to answer, &c.

The Form of a *Supersedeas* to deliver one out of Prison for Trespas, or the like.

Wigorn. **T**. B. Armig' unus Just' Dom' Reg' nunc
• ad Pacem in Com' præd' Conservand'
Constabul' Ville de S. necnon Custod' Gaolæ dicti Dom'
Reg' in Com' præd' Salutem. Quia M. B. de C.
Labourer, venit coram me & invenit suffic' securitor'
essendi coram justic' dicti Dom' Reg' ad Proximam
Generalem Session' Pacis in Com' prædict' tenend' ad
respondend' tam Domino Regi quam C. B. de quibus-
dam Transgres' seu Contemptibus, &c. per ipsum perpe-
trates, ideo vobis & cuilibet vestrum Mando, quod
prædict' M B à custodia vestra sine dilatione deli-
berari faciatis, & alio mandato meo inde direct' inte-
rim supersedere; & hoc Mandatum meum erit vobis
& cuilibet vestrum Warrant. Datum apud V. tali
Die, &c.

Or you may begin it thus: ff T. B. Armig'
Justic' Constabul' Ville de S. necnon, &c.

Superfedeas de Exig' Fac' de Felonia.

Ebor. **G** Georgius, &c. Vic' Com' Ebor' Salutem.
 Quia D. C. de B. in Com' tuo Pistor'
 venit coram F. E. & invenit sufficient' Manu captor'
 essendi coram Custod' Pacis nostræ (ac Just' nostris ad
 diversas Felon' &c.) ad General' Session' Pacis nostræ
 apud G. tali Die tenend' ad respondend' nobis de qui-
 busdam Feloniis unde indictatus est. Ideo tibi præci-
 pimus quod de ulterius Exigent' præfat' D. C. ad ali-
 qu' Comitatus tuum vel Imprisonand' sive ipsum ea
 occasione aliququaliter molestand' omnino supersed' &
 habeas ibi tunc hoc breve. Teste W. M. apud L.
 tali Die & Anno, &c.

Superfedeas de capias pro fine.

Cantab. **J.** B Armiger' unus Justic' Dom' Reg'
 nunc ad Pacem in com' prædict' Salutem
 Quia L. C. de N. in dict' com' Tonsor, venit coram
 me & invenit sufficient' Manu capt' essendi ad proxi-
 mam Generalem Sess. Pacis in Comitatus prædict' te-
 nend' ad faciend' Finem cum dicto Dom' Reg' pro qui-
 busdam Transgres' Contempt' & offensis unde indicta-
 tus existit. Ideo tibi præcipio quod de capiend' præf.
 L. C. Imprisonand' seu ipsam ea occasione aliququalit'
 molestand' omnino supersed' & habeas ibi tunc hoc
 præceptum. Teste &c.

There are other *Superfedeas's* on several Oc-
 casions: but finding these Forms, I thought
 good to set them down as a Light to further
 Matter of this Kind; and for a Treatise of them
 more at large, I refer you to Dalton, cap. 133.
 Crompt. 234.

C H A P. XXIII.

The Forms of Recognizances on several Occasions, to be taken by Justices of Peace, &c.

The Form of a single Recognizance to be taken before a Justice of the Peace.

Surrey. **M**emorand' quod — Die — Anno Regni Domini nostri Georgii Dei Gratia, Magnæ Britannix, Franciæ, & Hiberniæ Regis Fidei Defensoris, &c. Venerunt coram M. D. & W. C. Armiger' Justiciar' dicti Dom' Reg' ad Pacem in Com' S. conservand' Assignat' S. L. de B. in comitatu prædict' Toman, & W. S. de eodem Textor ac D. R. de S. in comitat' prædict'. Sutor, & Recognover' se debere dicto Dom' Reg' viz. quilibet Manucapt' prædict' decem Libr' & prædict' S. I. in viginti Libr' bonæ & legalis Monetæ Angliæ solvend' eidem Dom' Reg' in Festo Purificationis Beata Maria Virginis proximo futur' post dat' præsent' & nisi fecerint concesserunt pro se Hæred' Executor' & Administ' suis per præsentem quod dicta separales summæ levent' & recuperent' de Maneriis, Messuagiis, Ter' Tenement' Bonis, Catallis & Hæreditament' ipsor' S. I. W. S. & D. R. Hæred' Executor' & Assign' suor' ubicunque fuerint invent'. Dat' &c.

The Form of a Recognizance for the Peace.

Suffex. **M**emorand' quod — Die — Anno Regni Domini nostri Georgii Dei Gratia, &c. P. P. de E. in com' prædict' Aurifaber, in propria persona sua venit coram me T. L. Armig' uno Justic' dicti Dom' Reg' ad pacem in dicto com' conservand' assign' & assumpsit pro seipso sub pænâ Quinquæ.

quaginta Libr' & W. I. de M in com' prad' Yeoman, & T. N. de, &c. Agricola tunc & ibi in propriis personis suis similiter vener' & manuceperunt pro pradict' P. P. viz. quilibet cor' separat' sub pœna vigint' quinqu' lib' quod idem P. P. personalit' comparebit coram Justic' Dom' Reg' ad pacem ad prox' Generalem Sessionem pacis in com' pradict' tenend' ad faciend' & recipiend' quod ei per curiam tunc & ibid' injungetur & quod ipse interim pacem dict' Dom' custodiet erga ipsam Dom' Reg' & cunct' populum suum precipue versus N. M. — Yeoman, & quod dampnum vel malum aliqu' Corporale & gravamen Praef. N. M. aut alicui de populo dict' Dom' Reg' quod in Lessionem aut Perturbationem pacis ipsius Dom' Reg' seu praef. N. M. cedere valeant quovis modo non faciet nec fieri procurabit. Quam quidem sum' Quinquaginta lib' pradict' P. P. & quilibet Manucapt' prad' pradict' separales summas viginti quinque Libr' se debere dict' Dom' Reg' de Terris & Tenementis Bonis & Catallis suis quorumlibet & cujuslibet cor' ad opus dict' Dom' Reg' Hared' & Successor' suor' fieri & levare ad quarumcunque manus devenerit si contingerit ipsum P. P. promissa vel eorum aliquid in aliquo infringere & inde Legitimo modo convinci. In cujus rei Testimon' ego pradict' T. L. sigillum meum apposui. Dat' apud, &c.

• Note here, If the Justice only subscribe his Name to the Recognizance, without putting his Seal, it may be well enough.

The Forms of Conditions of Recognizances to be set under the Recognizance, or indorsed

The Form of a Condition to keep the Peace.

THE Condition of this Recognizance is such, That if the within-bounden H. H. shall personally appear before the Justices of our said

said Sovereign Lord the King, at the next General Sessions for the Peace to be held in the said County of *Sussex*, to answer to such Matters as shall be objected against him by *N. M.* within named, to do and receive what the Court shall then and there enjoin him; and that he do in the mean Time keep the Peace of our Sovereign Lord the King, and all his Liege People; and especially towards the said *N. M.* of *E.* afore-said, Yeoman; that then this Recognizance to be void and of none Effect, or else to be and remain in full Force and Vertue.

The Form of a Condition for one to appear before the Justices of Peace at their next Sessions.

THE Condition of this Recognizance is such, That if the within-bounden *W. A.* shall make his personal Appearance before His Majesty's Justices of the Peace at the next Quarter-Sessions of the Peace to be holden for the said County of *S.* then and there to make Answer unto such Matters as shall be objected against him (by *W. A.* or concerning, &c.) [*and here shew the Matter shortly*]; and shall also stand and abide such further Order as the said Court shall award, or set down therein; that then and from thenceforth this present Recognizance shall be frustrate and void, or else to remain in full Force and Vertue.

The Form of a Condition for one that hath dangerously hurt another.

THE Condition of this Recognizance is such, That whereas the within-bounden *K. R.* hath dangerously hurt or wounded *L. G.*
of

of R. within the said County of S. Butcher, giving him divers Blows or Cuts on the Head, Face, &c. with, &c. so as the said L. G. is in Danger of Death thereby. If therefore the said K. R. shall make his personal Appearance before His Majesty's Justices at the next general Gaol-Delivery to be held in the said County of S. then and there to make Answer to the Premises, and to receive that which then shall be by the Court enjoined him, and that he the said K. R. in the mean Time do keep the Peace, &c. as before.

C H A P. XXIV.

The Forms of Mittimus's to deliver Persons committed to Gaol, &c.

The Form of a Mittimus to send a disorderly Servant, or other disorderly Person, to the House of Correction.

Berks. I Have sent you herewith the Body of D. B. of R. in the said County of B. being an idle, dissolute, and disorderly Fellow, or one that will not keep his Service, nor follow an honest Course of Life. These are therefore to will and require you to receive the said D. B. and him safely to keep: till he shall be thence delivered by Warrant from me or some other His Majesty's Justices of the Peace for this County of *Berks*; and in the mean Time to keep him to hard Labour, giving him the Correction of the House, by whipping, and otherwise, according to the Law in such Cases provided; and hereof fail not at your Petil. Dated, &c.

W. Note,

Note, That the Justice at his Discretion may limit a Time for his Imprisonment in the *Mittimus*, as two or three Days, and then to be discharged, &c.

The Form of a Mittimus of a Felon after his Examination taken.

Surrey. **J.** B. Kt. one of His Majesty's Justices of Peace for the County aforelaid, to the Keeper of His Majesty's Gaol at the *Marshalsea* in the Borough of *Southwark*, in the County aforelaid, &c. Greeting. I send you herewith the Body of *A. B.* late of *G.* Labourer, brought before me this present Day, and charged with the felonious taking five Swine, (which he hath also confessed upon Examination before me;) And therefore these are, on the Behalf of our said Sovereign Lord the King, to command you, that you immediately receive the said *A. B.* and him safely keep in your said Gaol, until that he shall be thence delivered by due Course of Law: Hereof fail not, as you will answer the Contrary at your Peril. Given at C. the — Day of — in the — Year of the Reign of our Sovereign Lord, &c.

The Form of a Mittimus upon Suspicion of Felony, &c.

Essex. **T** H E S E are in His Majesty's Name to charge * and command you, that you receive into your Gaol the Body of *B. K.* late of *D.* Mariner, taken by *L. G.* Constable of the Town of C. and by him brought before me for Suspicion of Felony, &c. and that you safely keep the said *B. K.* in your said Gaol, until the next general Gaol-Delivery for

for the said County, [*if he be notailable; or ifailable, then thus,*] until he shall be thence delivered by due Course of Law: And hereof fail not, as you will answer the Contempt, at your Peril, &c.

✧ *Note*, That in every *Mittimus* the Cause of the Commitment is to be set down, to the End that it may appear, and be made known, whether the Prisoner beailable or not, and the *Mittimus* must be directed to the Gaol-Keeper or his Deputy.

Also where the Justices of the Peace out of their Sessions may hear and determine, and so may commit Offenders for the Offences, or Fine, it is necessary that in their *Mittimus* there be contained the Manner of the Offence, and how long Time the Prisoner is to be kept in Prison for it; and after this Manner, with varying the Names of Places and Persons, as it shall happen on the Occasion, and some other Variations in Point of Fact, &c. they may direct a Clerk to make others, &c. And *Mittimus's* may be directed thus: *ff.* To the Keeper of His Majesty's Gaol of N. and to the Deputy or Deputies there, and every of them. In Case one be committed for a Fact, where the Statute appoints the Fine upon the Parties being convicted before a Justice of the Peace, by Witness, or his own Confession, the Fact must be at large set down, as also the Penalty or Sum, and then it must be to continue him till he pays the Money therein mentioned, as in Case of unlawful Fishing, Hunting, Shooting of Conies, Pidgeons, or the like, with Hand-Gun, &c.

C H A P. XXIV.

The Form of Bailment by the Justices of the Peace, &c.

The Form of the Liberate, to deliver a Prisoner committed for Felony.

Rutland. **A**. D. and C. D. Esquires, two of His Majesty's Justices of the Peace, to the Keeper, &c. of His Majesty's Gaol in the County aforesaid, Greeting. Forasmuch as G. F. &c. Labourer, hath before us found sufficient Mainprize, to appear before the Justices of the Gaol-Delivery, at the next General Gaol-Delivery to be holden in the said County, there to answer to such Things as shall be then and there, on the Behalf of our said Sovereign Lord the King objected against him; and namely, to the felonious taking five Geese, for the Suspicion whereof he was taken and committed to your said Gaol. We command you on the Behalf of our said Sovereign Lord, That if the said G. F. do remain in your said Gaol for the said Cause, and for none other, then to forbear to grieve or detain him any longer, but that you deliver him thence, and suffer him to go at large. Given under our Hands and Seals this, &c.

The Form of another Bailment, where the Gaoler can conveniently bring the Prisoner before the Justice.

Cantab. **M**emorandum quod decimo Die Novembris, &c. L. C. de G. &c. W. W. de M. &c. Venerunt coram nobis S. T. & P. T. Militibus

litibus duobus Justic' Dom' Reg' ad Pacem in Com' prædict' conservand' Assignat' apud H. in Com' prædict' & Mancep' pro G. L. de, &c. utrumque eorum sub pæna Viginti Librar. &c. & prædict' G. L. nunc & ibidem similiter Assumit sub pæna Quadringenta Librar' consimilis Moneta Angliæ de Bonis & Catallis & Tenement' eorum & cujuslibet eorum ad opus & usum dicti Dom' Reg' Hæred' & Successor' suorum fieri & levari si præfat' L. C. defecerit in conditione indorsata.

The Condition of this Recognizance is such, That if the within-bounden L. C. shall make his personal Appearance before His Majesty's Justices of the Peace at the next general Sessions to be holden for this County, then and there to make Answer for and concerning the Suspicion of stealing five Sheep, whereof he standeth charged; then this Obligation to be void and of none Effect, or else to be and remain in full Force and Vertue, &c.

The Form of a Bailment for the Peace, the Party being in Prison.

Memorand', &c. B. A. de C. C. D. de L. & L. C. de M. venerunt coram me G. W. &c. & manceperunt pro R. B. de L. quod ipse pacem geret erga cunctum Populum Dom' Reg' & præcipue erga S. I. sub pæna cujuslibet manueptor' viginti Librar' & quod prædict' R. B. comparebit coram Justic' Dom' Reg' ad proximam Generalem Sessionem Pacis pro Com' prædict' tenend' apud L. in Com' prædict', &c. Dat', &c.

C H A P.

CHAP. XXV.

The Form of Releases by Justices of the Peace, &c.

The Form of the Release of a Justice of the Peace.

EGO præfat' L. D. qui supra nominatum A. D. ad præd' Securitat' Pacis inveniend' ex mea Discretionem compuli eandem securitat' Pacis quantum in me est ex mea Discretionem primo die Decembris, &c. remisi & relaxavi. In cujus rei Testimon. huic præsentem relaxationem meam sigillum meum apposui. Dat' Die & Anno supradictis.

➤ The Form of the Release of a Party before the same Justice that took it.

Ebor. **M**emorand' quod Decimo Die Novembris, &c. præfat' L. K. venit coram me R. G. & Gratis remisit & relaxavit quantum in se est prædict' securitat' pacis per ipsum coram me versus supra nominatum B. A. petitam. In cujus rei Testimon' ego præfat' R. G. sigillum meum apposui. Dat' &c.

These two Releases are to be written under the Recognizance it self; and if the Justice shall only subscribe his Name, without his Seal it is sufficient; especially where the Recognizance is not sealed. Or the Release of the Party may be by it self, in this Form :

Cantab. **M**emorand' quod D. C. de S. in Com' prædict' Yeoman, Vicesimo Die Decembris Anno Reg' Dom' nostri, &c. venit coram me B. I. Armig' uno Justic' dicti Dom' Reg' ad Pacem in Com' prædict' conservand' assign' apud W. in Com' præd' & ibi remisit & gratis relaxavit W. L. de S. in Com' præd' Labourer, Securitatem pacis per ipsum D. C. versus dictum W. L. coram me petitam. Dat' Die & Anno supradictis.

And if the Release be made before another Justice, who took not, or hath not the Recognizance, it may be thus :

Memorand' quod D. C. de S. in Com' prædict' Yeoman, Vicesimo Die Decembris, venit coram me D. N. Armig' uno Justic' dicti Dom' Reg' ad Pacem in Com' præd' conservand' assign' apud S. in Com' prædict' & Securitatem Pacis quam habet versus L. D. de V. &c. penitus remisit & relaxavit. Dat' Die & Anno supradictis.

& Note, That no Release will discharge the Recognizance, or Appearance of the Party bound thereby ; but that he must appear according to the Condition of the Recognizance, for the Safeguard of his said Recognizance.

Here follow brief Directions, or Helps to Gentlemen of the Grand and Petty Juries, whereby those that are not used to be on Juries may inform them in many material Things concerning the weighty Trust reposed on them in Discharge of their Duty.

CHAP. XXVI.

Of Indictments and Presentments, and the Difference between them; the Oath administered to the Grand Jury, and how they ought to enquire, &c.

THERE is made a small Distinction between Juries in the Title, as *Grand* and *Petty Juries*: The first is so called, as it seems, because it usually consists of a greater Number than the other, as 17, 19, 21, or the like; but they can make no Verdict, or Presentment, unless twelve of them at the least agree, and then, though the rest consent not, it is held sufficient. And they are further so called, because they generally are of the greater Quality; and likewise in regard of their Power, because their Office is more general, extending to all Offences throughout the whole County for which they serve as Jurors.

The *Petty Jury*, commonly called the *Jury of Life and Death*, consisting of 12 Men, are all to agree in a Verdict, or the Verdict cannot be taken, and is no Verdict.

The *Grand Jury*, or *Grand Inquest*, (for so they are often called) have principally two Things in their Consideration, *viz.* Indictments, and Presentments. Indictments are those that are usually drawn up in Form at the Instance of the Prosecutor, or by the Order of the Courts, and then brought before and delivered to the Grand Jury, and the Witnesses sworn to attend them, to be examined by them upon the Oath they have taken; and according as they credit or discredit the Evidence, or find Cause, they

indorse the Indictment, *Bills vera*, or *Ignoramus*; it is a true Bill, or we are ignorant; the latter concluding the Jury does not find the Matter or there does not upon Evidence appear a sufficient Ground for the Accusation, that the Party's Life or Reputation should be brought into Question or Dispute.

As for a Presentment, it is when of their own Knowledge, or upon Enquiry, the Jury themselves do take Knowledge of a Nuisance or Offence to the Injury of the Publick, which they think fit to have removed or punished, and of which they inform the Court to that Purpose briefly in Writing without Form, *viz.* The Nature of such Offence or Thing, and the Person's Name and Place who is the Aggriever, or where the Nuisance is, being a Ground and Matter whereon to form an Indictment; and the Presentment differing from the Indictment in two Particulars, *viz.* Its not being drawn up in due Form; and whereas the Indictment is commonly drawn up by the Order of the Court, or the Instance of some Prosecutor, as is said, the Presentment on the other Hand, is always originally the Act of the Grand Jury.

The Form of the Oath administered by the Court to the Grand Jury when they are to enquire, &c.

YOU shall diligently enquire, and true Presentment make of all such Matters, Articles and Things, as shall be given you in Charge, as well as of all other Matters and Things as shall come to your Knowledge. The King's Counsel, your Fellows, and your own, you shall keep; you shall present no Person for Hatred or Malice, neither shall you leave any one unrepresented,

ed. for Fear, Favour, Affection, or Gain, or any Hopes thereof; but in all Things you shall present the Truth, to the best of your Knowledge. *So help you God.*

And now from what has been said, it appears that this important Office is branched Twofold: The first is, to preserve the Innocent from the Disgrace and Hazards which by Malice or any sinister Means they may be brought into; for by the express Words of the Statute of 25 *Edw. 3. cap 3.* and the 43 *Edw. 3. cap 3.* it is said, That for preventing Mischiefs done by false Accusers, none shall be put to answer, unless it be by Indictment, or Presentment of good and lawful People of the same Neighbourhood, where such Deeds be done; and this no doubt may be taken to imply a Grand-Jury.

The other Branch is, to enquire after, and give Notice of all Nuisances, Offences, Crimes, and the like, in the County for which they serve, that so Offenders may be brought to Trial, if they are forth-coming; or if fled from Justice, may be proceeded against upon the Outlawry, and so Criminals punished according to their Demerit.

A Grand Jury, or Petty Jury, where there is no Witness against the Prisoner for the Crime he stands indicted for, yet, knowing him guilty of their own Knowledge, may find it accordingly; and this especially in the Petty Jury appears pretty plain, by the Words spoken to them by the Court; for if no Witness appears, the Court thus speaks to the Jury, or to this Effect: Gentlemen of the Jury, here is *L. C.* stands indicted of such a Crime, (*naming it*) and there is no Witness come against him. So unless you of

your own Knowledge know him guilty, you must acquit him ; but where there is Evidence, the Grand Jury must industriously examine the Evidence for the King, and the Petty Jury must have the Prosecutor and his Evidence, if he have any, Face to Face with the Prisoner, and patiently hear what can be alledged in charging the one, and the others defending himself, and deliberately weigh the Matter, and may pray the Court to ask such proper Questions of the Evidence, and of the Prisoner, as they think fit, for their better Satisfaction and sifting out the Truth of the Matter, and to judge of Matter of Fact according to their Evidence, as in their Consciences they shall believe ; and where a Thing is doubtful to them that they cannot well determine, they may find it Special, and leave it to the Determination of the Judges, and so acquit themselves where such Doubts or Scruples shall arise, of falling into an Error in Point of Law, of which the Jurors are not held proper Judges ; but where it so requires, must leave it, Special.

And thus having spoken mostly to Generals I now come nearer to Particulars, which may briefly give a further Light into these weighty Matters, that Men warned upon a Jury and empanelled, may be prepared a little to know what is requisite in so great a Charge and Trust.

C H A P. XXVII.

Several material things to be known relating to Juries, as the Law directs, and according to the Opinion of the Learned Lawyers.

Juries, both for Enquiry and Trial, ought to be *Probi & Legales Homines.* Lamb. 396.

Jurors must be Inhabitants or Freeholders within the County, to the Value of 4 *l.* per Ann. by 27 *Eliz.* 6 But in Cities and Boroughs, to the Value of 40 *l.* in Goods. Lamb. 396, 397. By *Stat.* 4 & 5 *W. & M.* Jurors are to have 10 *l.* a Year Freehold or Copyhold.

A Juror 70 Years old, or decrepid, must serve, if returned by the Sheriff, if the Justices will have him to serve; but he may, if he will, sue the Sheriff upon the Statute of *Westminster* 2. cap. 38. Lamb. 307.

Where a Baron is sued, a Knight must be returned on the Jury. *Ibid.*

Jurors must not be nominated by any but the Bailiffs, as well in Inquisitions before the Coroner, as Indictments before the Justices of Peace. 1 *Cro.* 134.

Jurors exempted by Charter, with the Words [*Licet Tangat nos*], are to be discharged upon Appearance, shewing it to the Sheriffs; but when there is want of sufficient Jurors, no Exemption can discharge. *Stat. West.* 2. cap. 38. Lamb. 197.

A Jury of one Hundred may present an Offence done in another Hundred. Lamb. 399.

Justices may command the Sheriff to alter the Panel, and he upon Refusal forfeits 20 *l.* *Ibid.* 3 *Hen.* 8. cap. 12.

Jurors may be amerced for refusing to present, being sworn. 8 Co. 39. a.

A Juror, after he is sworn, upon sufficient Cause appearing, may by the Justices be removed. *Lamb. 400.*

Jurors of Enquiry must be twelve, as I have already said; but they may be more, and usually they are an odd Number, though 12 of them agreeing, the Presentment is good, and an Indictment may be found. *Lamb. 400.*

No Juror to be returned without an Addition whereby he may be known. 27 Eliz. c. 7. *Lamb. 432.*

Jurors that discover what they have done, are fineable. *Lamb. 402.* If they make a favourable Presentment, they may be committed and fined.

C H A P. XXVIII.

Penalties upon Foresters of Markets, Fairs, &c. Badgers, Drovers, Butchers, Tanners, Innholders, what they may do in some Cases, and what they ought not to do, &c.

THERE are several good Laws made to hinder Abuses in one Man's intrenching on another, and ingrossing Commodities to himself in hindrance of the Trade of others, and making the Commodity dear, &c. Of which, and other Things necessary to be known, I shall treat in this Chapter.

A Forester is a Person who buys or contracts for any Victuals or Wares, before they come to the Fair, Market, or Port, or moveth any Party to enhance the Price, and not to bring such Victuals or Wares to any Market, Fair,

Fair, or Port, *Lamb.* 450. Of which the Party being convicted before the Justices of the Peace at the Quarter-Sessions, by the Examination of two Witnesses, or a Presentment of Forefalling within two Years; for the Offence the first Time, shall lose the Goods, and be imprisoned two Months without Bail or Mainprize; for the second Offence, lose double the Value of the Goods, and be imprisoned for the Space of six Months; for the third Offence, to forfeit all their Goods, stand in the Pillory, and be imprisoned during the King's Pleasure. 5 *Edw. 6. cap.* 14. *Dalt.* 87. *Lamb.* 570.

The Moiety of these Forfeitures upon Forefalling, due unto the Party informing upon the Statute of Forefallers, is to be levied by *Fieri facias*, or *Capias*, to be awarded by the Justices of the Peace. *Lamb.* 548.

A Man or Woman buying Corn for Seed, and not bringing so much to the Market, forfeits double the Value. 5 *Edw. 6. c.* 14.

No Licence shall be but in open Sessions for Drovers, Badgers, &c. A Drover is meant here one that buys Cattle in one Place, and carries them to another to sell. A Badger, one that buys Corn or Victuals in one Place, and carries it into another. Either of these so trading must be a married Man, and an Householder, 30 Years old, or upwards, and licensed, under the Penalty of 5 *l.* by 5 *Edw. 6. cap.* 14. Also he must have dwelt 3 Years in the County, selling in open Fair or Market, for Provision of Houses not prohibited to Badgers, licensed by 5 *Edw. 6.* against Ingrossing; and these must give Bond not to forestall, &c. nor to buy Corn out of Fair or Market, under the Penalty of 5 *l.* unless so limited by special Words in the Licence.

Traders

Traders in Butter and Cheese prohibited in open Sessions from buying, if they do, are subject to the Penalties in the 3d and 4th of *Edw. 6. cap. 12*: and the 5th and 6th of *Edw. 6. cap. 14*. notwithstanding they extend not to such Traders, Freemen of *London*.

None shall ingross Oak-Bark, under Penalty of forfeiting it. 1 *Jas. 21*.

So of Hides coming to Market; nor buy, except of the Owner of the Beast, to be spent in his House, under the Forfeiture of 6 *s.* 8 *d.* for every one.

Excepted out of 5 *Edw. 6.* Barley or Oats to be made into Oatmeal.

So Things belonging to Butchers, Fishmongers, Poulterers, sold again at reasonable Rates.

So Corn, Cattle, &c. reserved in a Lease taken. Also Wine or Victuals, by Inn-keepers; dried Fish, Corn, Butter, and the like, by licensed Badgers, &c.

So Provision for a City, Shipping, Castles or Ports.

So Fish brought by Persons dwelling within a Mile of the Sea. So Wine, Oils, and Foreign Victuals, (Fish and Salt-fish excepted.)

Excepted out of 3 & 4 *Edw. 6.* and 5 *Edw. 6. c. 14*. Butter and Cheese bought by Freemen of *London*, and sold again in the Liberties of the said City, Borough of *Southwark*, and *Westminster*.

Any Butcher that gasheth, slaughtereth or cutteth the Hide of the Ox, or Steer, or Bull, or Cow, so that it is impaired, loseth 20 *d.* Or that wetteth or watereth any Hides, unless in *June*, *July*, and *August*; or putteth to Sale any
pu-

putrified or rotten Hides, for every one of them loseth 3 s. 4 d. 1 Jac. c. 32. Lamb. 462.

A Butcher using the said Craft, and also the Mystery of a Tanner, loseth for every Day 6 s. 8 d. *Ibid.*

A Tanner using also the Mystery of a Shoemaker, Currier, Butcher, or any other Artificer, using, cutting or working in Leather, loseth the Hides and Skins tanned. *Ibid.*

None may buy or contract for, or bespeak any rough Hides or Calves-Skins, but only a Tanner or Tawer of Leather, except Salt Hides, for the necessary Use of Ships, on Penalty of 6 s. 8 d. for every Hide so bought or contracted for. 1 Jac. 22. Lamb. 463.

None shall forestal any Hides coming to a Fair or Market, except such as kill for the Provisions of their House, on Penalty of 6 s. 8 d. for every Hide.

None may buy tanned Leather or wrought, but such as will convert them into made Wares, except Necks, and Shreads of Sadlers and Girdlers, upon Penalty to lose the said Leather. 1 Jac. c. 22. Lamb. 463.

A Tanner putting to Sale any insufficient Leather, not thoroughly wrought and tanned, or not well and thoroughly dried, and the same so found by the Triers appointed. 1 Jac. cap. 22. loseth so much as is insufficient. Lamb. 464.

See more of this in Statute 1 Jac. 1. c. 22. &c.

The Garbler of London, his Deputy or Assign, in the Day-time, may enter any House, Shop or Warehouse, to see if the Wares, &c. be garbled; if not, to cleanse them; and Forfeitures of this Kind to go to the King and Informer. *Ibid.*

An Innholder or Ostler, in a Thorowfair, Town-Corporate, or Market-Town, being a Baker, and one that hath been an Apprentice there-to seven Years, may make House-Bread within his House. 21 Jac. I. c. 21.

This Sort of Bread, called Horse-Bread, must be of a lawful and sufficient Size, according to the Price of Corn, as it is at a Rate in the Neighbouring Markets at that Time, according to 21 Jac. I. c. 21.

C H A P. XXIX.

Some Matters relating to the Coroners Office, and Duty, in View of dead Bodies; out of Rastal, &c.

THE Law, says he, is, If a Man or Woman, &c. be wounded, and thereby in Peril of Death; the Party that did it, or was assisting in it, being apprehended, may be committed and kept in Custody till it be perfectly known, by the Testimony of skilful Persons, whether the wounded Party will live or die of those Wounds or Blows given; and if he die, the Coroner, upon View of the dead Body, shall enquire of him or them that have done the Fact, whether Man or Woman, and take the Names of them that were present as Witnesses, or any otherways knowing of it. Also he shall take especial Notice of the Abettors and Concealers in or towards the Fact, or any Way therein concerned; and so found, to enrol and certify the same.

The Coroner, according to his Inquest, shall give in the Verdict; and he is to take care to
pro-

prosecute the Offender or Offenders, if the Relations of the Deceased or others refuse, or are negligent in so doing. So that if any Man, &c. be slain or murdered, and thereof the Slayers, Murderers, Abettors, Maintainers and Comforters, may be indicted, and brought to Arraignment and Trial of the Issue, whether they are guilty of the Murder, Manslaughter, &c. or not guilty; it may be done any Time in a Year and a Day after the same Felony and Murder committed, which must be dated from the Time of the Wounding or Beating, not from the Time of the Dying, if the Party languish, and live any Time after, though somewhat considerable, as a Week, a Month, or more.

And the Wife or Heir of the Person so slain or murdered, as the Case requires, may commence his or her Appeal in proper Person, any Time within the Year after the said Felony done; or before the Sheriff and Coroner of the County where the said Felony and Murder was done, before the King in his Bench, or Justices of Gaol-Delivery. And the Appellant, in any Appeals of Murder or Death of a Man, &c. where Battel by the Course of Common Law is not allowed, may make their Attornies, and appear by the same.

And the said Appeals after they be commenced, may be prosecuted to the End of the Suit and Execution.

If a Murderer or Manslayer escape, the Justices of the Peace have Power to enquire of such Escapes, and to certifie them in the King's Bench; and after the Felony found, the Coroners are to deliver their Inquisitions before the Justices of the next Gaol-Delivery in the Shire or County where the Inquisition is taken; and they

they are to proceed against such Murderers, if they be in Gaol, or else certifie the Inquisition in the King's Bench; or, as it is called, put the said Inquisition before the King in his Bench.

All such Coroners as are remiss in their Office, or Duty of their Place, and make not their respective Inquisitions upon the View of the dead Body, and certifie not according as aforesaid or ordained; every Coroner, for such Offence, forfeits to the King 5*l.* by 3 *Hen.* 7. *cap.* 1.

A Coroner may find any Nuisance which occasion'd the Death of the Man. He may cause a Body to be dug up, and amerce the Vill, &c. His Fee is 13*s.* 4*d.* out of the Goods of the Slayer. 3 *H.* 7.

And now, that the Coroner may not be ignorant what Murder is, I shall briefly lay it down in general, and many material Particulars.

C H A P. XXX.

*Murder, how taken, and what is observable therein,
so make it so wilfully, &c.*

MURDER is, when a Man or Woman upon Malice prepense, precedent, or forethought, doth feloniously kill another living within the Realm, or under the Protection of the King, whether openly or privately, or whether the Party slain be *English* or an *Alien*. *Lamb.* 237. *Dalt.* 342. *Crompt.* 21. *a.* *Num.* 1. Clergy taken away. 1 *Edw.* 6. And in this Case, Killing shall have relation to the Death, and not to the Stroke. 4 *Coke* 42. *Crompt.* 21. *a.* *Num.* 1.

Ma-

Malice is either expressed. *Crompt. 21. a. Dalt. 241.* or implied. *Lamb. 239.*

Malice expressed is, in a Case where it is known there is Malice between the Parties. *Crompt. 11. a.* and is apparent, as where there is a preceding falling out, or lying in wait, or a Time and Place appointed. *Lamb. 238, Dalt. 343.*

Malice implied, is to be taken where a Man or Woman, &c. is killed suddenly without Defence. *Crompt. 21. a. Num. 2. Dalt. 343.* As one busie at Reading, or going over a Stile, suddenly killed by a Party; or whete one killeth another without Provocation; one stabbed, and not having a Weapon drawn, dying in six Months; these are Murder, and so noted by *Dalton, Lambard, Crompton*, and others, and the Statute of Stabbing. *1 Jac. 1. c. 8. Dalt. 343.*

To kill an Officer known in executing Process. *Dalt. 343.*

So to kill an Officer unknown, if he shew his Warrant; and if an Officer hath a Writ or lawful Warrant, though the Process be erroneous in awarding, or one Process taken for another, and the Officer be slain in executing it, it is Murder. *Dalt. 343. 2 Cro. 280. 9 Co. 68. Lamb. 240.* So though the Arrest were made in the Night-time; but where the Arrest is tortious, or where an Officer not known shews not his Warrant, or the Arrest be made on the Lord's-Day, usually called *Sunday*, (by *Stat. Car. 2.*) it is but Manslaughter. *Ibid.*

It is Murder to kill a Magistrate or Minister of Justice in executing his Office, or in keeping the Peace. *Crompt. 25. B. Num. 51. Dalt. 343.*

An Officer whipping or branding to Death, is Murder, 344. A Rioter killing an Officer, or Assistant,

66 A Help to Coroners, &c.

Assistant, coming to suppress a Ri^{or}, it is Murder in the Rioters. *Dalt.* 443. *Crompt.* 23. *B. Numb.* 28. *Lamb.* 241.

A Thief killing a true Man resisting, it is Murder of Malice prepense, for here Malice is implied by the Law, because the Thief came purposely to do an ill Act, tho' not purposely to kill the Man. *See Lamb.* 241. *Dalt.* 344. *Crompt.* 22. *a. Numb.* 13. 9 Co 67.

One assaulting another, after the Assault flyeth to the Wall, and then killeth the other, it is Murder; for he slew him in the said Malice wherein he did assault him. *Lamb.* 239.

One condemned to die, is killed by a private Person without Warrant, or by the Judge who condemneth him, or by the Officer contrary to the Judgment, it is Murder. *Dalt.* 340. *Lamb.* 240. 5 *Eliz.* 1.

So a Physician or a Surgeon, having Malice, applies a contrary Medicine, of which the Patient dies. *Dalt.* 344. But the Malice must be prov'd.

A Person carrying his sick Father, &c. and laying him in the cold Frost, &c. so that he dies, is Malice; for by it the Law presumes he intended his Death. So a Strumpet covering her Child with Leaves in the open Way, &c. to hide it, and a Beast tramples on it and kills it, or a Cart goes over it, &c. *Lamb.* 240. *Dalt.* 352. and of the former. *Dalt.* 344. *Lamb.* 740. And many the like Cases, too long to be here set down; where there is Malice Forethought, Prepense, or that the Law presumes or implies it to be Malice in the Party who kills another, or sets on another to do it, by Assassinating, &c.

C H A P. XXXI.

Homicide and Manslaughter, Felo de se, &c.

Homicide is killing of a Man by Man. *Dalt.* 339, 349. It is no Difference whether the Party slain be a *Denizen, Alien, or English Man*, if he lives under the King's Protection. *Dalt.* 340. *Lamb.* 237. *Crompt.* 221. *a. Num.* 1.

Homicide is also either killing himself, *Felo de se*, or by another; a Man by killing himself forfeits to the King his Goods and Chattels real and personal, and his Debts due by Specialty. *Dalt.* 341. But no Lands nor Blood corrupted, *ibid.* but his Goods are not forfeited till his Death. *Ibid.*

An Infant, or *non compos mentis*, does not forfeit; but a Lunatick killing himself out of his Lunacy, doth forfeit his Goods. *Dalt.* 340.

Homicide of another, is either voluntary, or involuntary; voluntary is Murder. *Vide* Murder, or Manslaughter.

Manslaughter is, when two Men, &c. fight together on a sudden without precedent Malice, and one of them kills the other. *Dalt.* 349. *Lamb.* 248. *Crompt.* 16. *a.*

Manslaughter is either by Chance-medley, or *se defendendo*, House and Goods.

By Chance-medley is Felony, but may have Clergy. *Dalt.* 349.

One fighting breaks his Weapon, another standing by puts one into his Hand, or otherways lends it him, and with it he kills another, it is Manslaughter in the Lender. *Dalt.* 134. *Crompt.* 16 *b.* *Numb.* 12. *Lamb.* 252.

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The Servant fighting in his Master's Defence, though there were Malice in the Master, and not told to the Servant, and one be killed. *Lamb.* 240.

So a Stranger taking Part. *Lamb.* 238. is Chance-medley. *Dalt.* 348.

If two that were in Malice are reconciled, and fall out upon a new Occasion, and one is killed, it is Manslaughter only. *Dalt.* 350. *Lamb.* 250.

Se defendendo is where one killeth another in the necessary Defence of himself thereby to save himself, or his Possessions or Goods, or some other Person which he is bound to defend from Peril; and it is either against a Felon, Murderer, Thief, or Loyal Subject. *Dalt.* 356. *Lamb.* 152.

Against a Loyal Subject, if he be assaulted by another Man, he must fly so much as he may till he be hindered by some Wall, or other material Hindrance, that his Necessity of Defence may seem inevitable; and he shall be committed till the Time of his Trial, lose his Goods, and sue out his Pardon. *Lamb.* 253. *Dalt.* 35. It is not material if he strikes before he gave any deadly Wound, if he flies to the Strait. *Dalt.* 357, 358.

If a Man fly to a Wall and hold out his Weapon, if the Pursuer run upon it and is killed, it is *Se defendendo*, and forfeiteth his Goods. *Crompt.* 28. *a. Namb.* 7. *Dalt.* 349. But if he had fallen on the Ground, and the other fall on it and kill himself, there is no Loss of Goods, for he could not fly; and the Slain is in a Sort *Felo de se*. *Ibid.* *P. R.* 122. *b. Staund.* 16. *a.*

If a Man fall to the Ground, then his flying to a Strait is not necessary, because he might be there inevitably killed, if he did not defend himself. *Dalt.* 347, 358. An

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An Officer or Minister of Justice, executing his Office, is not bound to fly. *Dalt.* 358. *Coke* 98, 99.

If a Servant kill one that robbed or killed his Master, so it be done presently, or in Defence of his Master's Person or Goods, if he could not otherwise have avoided the same. *Dalt.* 358. *Crompt.* 28. *Numb.* 2.

To shoot at one that comes to burn a Man's House, is justifiable in him or his Servants. *Dalt.* 356, &c.

In the Defence of the Possession of a Man's Goods or House, he may justifie to beat him, but may not kill him, though the Party come wrongfully to take his Goods, unless he be a Thief. *Dalt.* 358, &c.

To kill a true Man, in Defence of House, Goods or Land, is Manlaughter. *Dalt.* 338. *Crompt.* 27. *b.* *Numb.* 4.

C H A P. XXXII.

Involuntary Homicide.

THIS is either by Misadventure, or Necessity.

The first is, when a Man doing a lawful Act, killeth a Man; this is not Felony of Death, but he shall have his Pardon of course for Life and Lands, but forfeiteth his Goods. *Lamb.* 254. *Dalt.* 351.

For Example: A School-Master, Father, Mother, or Master, correcting a Child, Scholar or Servant; moderately shooting at Pricks, Buts or lawful Marks; a Workman casting Tiles, Timber or Stone, from off a House, or any Thing from

from a Cart, and giving Warning ; or doing other lawful Things, giving Warning.

But the killing of a Man, in doing any unlawful Act without evil Intent, is Felony ; as shooting Arrows, casting Stones into Highways where People resort, or unto other Places of usual Resort, &c. *Dalt.* 352.

If a Man be slain by the Fall of a House or Tree, by a Beast, &c. and any Party by a wilful Default causes it, it is said to be Felony. *Dalt.* 251.

C H A P. XXXIII.

Many useful Matters advantageous to Prisoners, in relation to the Habeas Corpus Acts, and others.

THE Law of *England* is allowed, even by Strangers, to be a Law of Mercy, and the best constituted of any other in the World, having a principal Regard and Care of three the most material Things, *v z.* Life, Liberty, and Estate ; next to the Life of Man, Liberty is the most precious and desiræable ; and therefore, saith *Fortescue*, the Laws of *England* in all Cases favour *Liberty*.

And to this End, the Writ of *Habeas Corpus* is a Remedy given by the Common Law for such as were unjustly detained in Prison, to procure their Liberty, but much more advantageous since the Act of *Tricesimo Primo Car.* 2.

This Act concerneth either, First, Persons committed for some other Criminal or supposed Criminal Matter, besides Treason or Felony ; and these are to have a *Habeas Corpus* immediately.

2. Those who in their *Mittimus* are charged with Treason or Felony, and such shall have the Benefit of that Writ after the Time limited.

1. If any Gaoler or Under-Keeper shall not deliver a true Coyy of the *Mittimus* within six Hours after it is demanded by the Prisoner, the Head Gaoler or Keeper forfeits to the Prisoner for his Offence 100 *l.* for the second Offence 200 *l.* and loses his Place; nor is there any Fee to be paid for the same. The Turnkey must deliver it at his Peril; and if the Prisoner be lock'd up, and none be admitted to see him, any Friend may demand it for him.

If Treason or Felony be not expressly charged in the *Mittimus*, any Person in the Prisoner's Behalf carrying such a true Copy of the Commitment to the Lord-Keeper, or any of the Judges or Barons of the Exchequer, or upon Oath made that a Copy was demanded, and denied, he shall grant an *Habeas Corpus*, or forfeit 500 *l.* to the Prisoner; but this Request must be made to such a Judge in Writing, and attested by two Witnesses.

If the Sheriff or Gaoler do not carry up the Prisoner, and return the true Cause of his detaining within 3 Days, if under 20 Miles; or within 10 Days, if above twenty, and under 100 Miles; or within 20 Days, if above 100 Miles, he forfeits 500 *l.* to the Prisoner.

But the Prisoner must pay the Charges of his carrying, and the Judge when he grants the Writ may order how much, but it must not exceed 12 *d.* a Mile; and if upon the Return of the *Habeas Corpus* it appears the Prisoner is not charged with Treason or Felony, especially and plainly expressed, or of such Matters as by Law are notailable, the Judge shall discharge the Prisoner upon Bail.

W Note

✶ Note further, That if the Person so bailed out shall again be imprisoned for the same Offence, those that do it forfeit 500 l,

If there be High Treason or Felony plainly and specially expressed, then the Prisoner cannot have his *Habeas Corpus* till he has the first Week of the Term, or the first Day of the Sessions of Oyer and Terminer, or General Gaol-Delivery, petitioned in open Court to be brought to his Trial; and then if he be not brought to his Trial the next Term, or following Sessions, on the last Day thereof he shall be admitted to bail; and if not indicted the second Term or Sessions, he shall be discharged; unless the King's Witnesses are not ready. And this Act extends to all Places within *England* and *Wales*. And that no Person shall be sent Prisoner out of *England* or *Wales*, into *Scotland*, *Ireland*, *Jersey*, *Guernsey*, or into any other Place beyond the Seas; with many other Proviso's and Clauses, very beneficial to the Liberty of the Subject.

And as the Law thus provides for Men's Liberties, so it takes Care they shall not be abused or wronged, when in Custody; as appears by the Statute of 22 & 23 Car. 2. cap. 20. where among other Proviso's these for Debtors.

That no other Fees shall be paid but such as are allowed by Law. That they shall not be carried to any Tavern, Alehouse, or other publick Victualling or Drinking-house, without their free Consent; so as to charge them with any Sum of Money for any Wine, Beer, Ale, Victuals, Tobacco, or any other Thing whatsoever, more than what he or she shall call for of their own Accord. That no Officer or Officers shall take, demand or receive, or cause to be taken, demanded, or received, directly or indirectly, any other

other or greater Sum or Sums than what by Law ought to be taken or demanded for such Arrest, Taking or Waiting, till such Person or Persons shall have procured an Appearance, found Bail, agreed with his or their Adversary, or be sent to the proper Gaol belonging to the County, City, Town, or Place, where such Arrest or Taking shall be.

That they shall not exact any other Reward or Gratuity for so keeping the said Person or Persons out of the Gaol or Prison, than what he, she, or they, shall or will, of his, her, or their own Accord, freely and voluntarily give ; nor take nor receive any other or greater Sum or Sums for each Night's Lodging, or other Expences than what is reasonable and fitting in such Cases, or shall be adjudged by the next Justice of the Peace, or at the next Quarter-Sessions.

That they shall have free Liberty in Prison to send for Drink, Vi&uals, and other convenient Necessaries where they please, without Interruption ; also to bring in their Beds, Linen, &c. as they shall think fit, without any purloining, detaining, or paying for the same, or any Part of them ; nor receive any other greater Fee or Fees whatsoever for his or their Commitment, Release or Discharge, or for Chamber-Rent, than what is allowable by Law ; and that they the Prisoners shall have and enjoy the Gifts belonging to the respective Prisons without any De-fraud, receiving the full Benefit thereof, according to the true Intent of the Donors.

That no Prisoners for Debt shall be lodged in the Room or Chamber together with Felons, but that they shall be put, kept and lodged separate and apart in distinct Rooms, upon Pain that he, she, or they that shall offend against this Act, or

the true Intent and Meaning thereof, or any Part thereof, shall forfeit or lose his or her Office, Place or Employment, and forfeit treble Damage to the Party grieved, to be recovered by Vertue of this Act; This Act or any Law, Statute, Usage or Custom to the contrary in any wise notwithstanding.

C H A P. XXXIV.

Of Mayors of Towns, and their Office.

A Mayor is the principal Magistrate in a Corporation-Town; and is empowered to act as a Justice of Peace within his Limits.

If any Person intrudes into the Office of Mayor, or Bailiff of a Town, a *Quo Warranto* may be brought against the Usurper; and if he be found guilty of an Intrusion, Judgment of *Ouster* shall be given, and the Offender shall be fined. And no Person shall be chosen into the same Office the next Year, after he hath served one Year, &c. *Stat. 9 Ann. c. 20.*

By the Statute 13 Car. 2. no Person shall bear any Office of Magistracy, in any Corporation, &c. that hath not received the Sacrament, within one Year next before the Election made; and who shall not take the Oaths to the Government: The *Stat. 10 Ann.* prohibited Mayors from resorting to any Conventicles, &c. on Pain of 40*l.* But by 5 Geo. this last is altered; but the Ensigns of Magistracy, as the Mace, Gown, &c. may not be carried to any Conventicle. *Vide* the Statute.

Mayors are mentioned in several Statutes, particularly for redressing Offences of Bakers,
Drun-

Drunkenness, Hedgbreakers, Servants, Swearing, Vagrants, Weights and Measures, &c.

C H A P. XXXV.

The Office of a Mayor relating to Bakers of Bread, &c.

THE Power of regulating the Assize of Bread, and of examining into its Goodness, is lodg'd in Mayors of Towns, Bailiffs, &c. and Lords of Leets: And these when they find any Bread unlawfully made, may give it to the Poor, and inflict a Punishment on the Offenders.

Chief Magistrates of Towns, may, at their Pleasure, enter any Bake-house, Shop, &c. where Bread is made, to search, weigh and try the Bread; and if there appear to be any Deficiency to its Weight, Goodness, &c. the same is to be seized and distributed amongst the Poor: And if the same be wanting in Weight, &c. a Penalty of 40 s. is likewise inflicted. *Stat. 8 Ann.*

But by 1 Geo. the Penalty is made 5 s. for every Ounce wanting in Weight; and 2 s. 6 d. Forfeiture for any thing under an Ounce. And this is understood where Complaint is made, &c. within 24 Hours, and the Bread is weigh'd in that Time.

Mayors, and other Justices are to direct in what Manner each sort of Bread shall be marked; so as to know by the Mark the Baker, Price, Weight, and Sort thereof; and also to make Rules and Orders for better regulating the Mystery of Baking, as to the Price, Weight, &c. *Stat. 8 Ann. c. 18.*

C H A P. XXXVI. .

The Power of Mayors to punish Drunkenness.

Mayors of Corporations, &c. have Power, by Virtue of the *Stat. 4 Jac. 1.* to punish the Offence of Drunkenness. The Punishment is a Penalty of 5 s. or on Default of Payment the Offender to be set in the Stocks six Hours. This is for the first Offence : And for the second Offence he is to be bound to the Good Behaviour, with two Sureties. The Conviction to be either by View of the Magistrate, Oath of one Witness, or Confession : And Prosecution to be within six Months. *Stat. 4 Jac. 1. c. 5. 21 Jac. 1. c. 2.*

Persons sitting tipling in an Alehouse, &c. are liable to a Forfeiture of 3 s. 4 d. for every Offence, or to be set in the Stocks four Hours. The Conviction to be by the Oath of one Witness, Confession of the Party, &c. *Stat. 21 Jac. 1.*

Alehouse-keepers permitting tipling shall forfeit 10 s. And the Offender is to be committed till paid. He is also disabled to keep an Alehouse within three Years afterwards. *1 Jac. 1.*

Mayors have also a Power of convicting Persons selling Ale without Licence. And by 23 H. 8. they were impowered to set the Price of Ale and Beer, &c.

C H A P. XXXVII.

The Power and Authority of Mayors in punishing Hedg-breakers, Orchard-Robbers, &c.

Hedg-breakers, Robbers of Orchards, &c. are Offenders punishable by Mayors. And the Statute 43 Eliz. enacts, That if any Person shall unlawfully break, cut, and carry away any Hedges, Pales, Fences, Underwood, Corn growing, rob Orchards, &c. being convicted within six Weeks after the Offence committed, by Confession, Oath of one Witness, &c. He shall pay to the Party grieved such Damage as the Mayor, &c. shall think fit; or be whipped by the Constable, &c. 43 Eliz. c. 7.

If any Person shall have in his Custody Wood, Underwood, Poles, Gates, Stiles, &c. and not be able to give a good Account how he came by the same; or shall not in a convenient Time produce the Person of whom bought, or some Witness to prove the Sale, &c. he shall make such Recompence as the Justice or Mayor shall appoint, and pay a Sum not exceeding 10 s. for the Use of the Poor: Or for Default thereof he shall be sent to the House of Correction for any Time not exceeding a Month, &c. Stat. 15 Car. 2 c. 2.

Persons convicted of buying stoln Wood, are liable to a Penalty of treble Value, payable to the Person from whom taken, (leviable by Distress) or in Default to be committed for one Month.

C H A P. XXXVIII.

The Office of a Mayor as to Servants and Labourers.

Matters relating to Servants, Labourers, and Apprentices, Mayors are empowered to determine.

If any one retain'd as a Servant depart without Leave, it is punished with a Month's Imprisonment : And if any such do not give a Quarter's Warning, it is also punishable by *Stat. 5 Eliz.* Unmarried Women fit to go to Service, being above twelve Years of Age, and under forty, may be compelled to serve for convenient Time, and Wages, or be imprisoned. *Ibid. Stat.*

Mayors, as well as Justices of Peace, have Power to assess the Wages of Labourers, &c. at Easter Sessions : And in Time of Harvest they may require Persons fit for Labour, to work by the Day ; or on their Refusal put them in the Stocks : They may also license Labourers by Testimonis, to go from one County to another, in Time of Harvest when there is not sufficient Work for them where they dwell. *Stat. 5 Eliz.*

6. 4.

Givers and Takers of greater Wages than are set by the Justices, are punishable by the said Statute. And Labourers having undertaken Work by the Lump, departing before the same is finished, (unless the Wages agreed be refus'd by the Master, or he give them Leave) shall be imprisoned for a Month, and forfeit *5 l.*

But this is recoverable by Action of Debt, &c. *Ibid. Stat. 5. Eliz.*

C H A P.

C H A P. XXXIX.

The Duty of a Mayor relating to the Crime of Swearing.

SWearing is an Offence punishable by our Laws. Persons profanely swearing or cursing in the Presence of a Mayor, &c. or who shall be thereof convicted before such Magistrates, by the Oaths of two Witnesses, they shall forfeit 1 s. for the Use of the Poor for every Offence, or be set in the Stocks three Hours; if the Offender be above twelve Years old; otherwise he is to be whip'd. *Stat. 8 Car. 1. c. 4.*

But by 6 & 7 W. 3. if any Servant, Labourer, common Soldier or Seaman shall profanely swear in the Presence or Hearing of a Justice of Peace; or be convicted thereof by Confession, or Oath of one Witness; they shall forfeit 1 s. for the first Offence; for the second double, the third treble, &c. Every other Person not being a Servant, Labourer, &c. forfeits 2 s. for the first Offence, and for the second double, &c. *ut supra*, to be levied by Distress: And if there be no Distress, the Offender is to be set in the Stocks one Hour for the first Offence, and two Hours for more Offences, if the Offender be above sixteen Years of Age; if under, to be whip'd.

A Justice, &c. neglecting to put the Act in Execution, to forfeit 5 l. And Parsons are to read the Act in their Churches the next Sunday, after every Quarter-Day under the Penalty o

20 s.

CHAP. XL.

A Mayor's Power concerning Vagrants.

THIS is an extensive Branch of the Business of a Justice of Peace; and Mayors, &c. may not only cause Vagrants to be whip'd; but by the ancient Statutes they have Power to make Passes of Vagrants. And by *Stat. 21 Jac. 1. and 11 & 12 W. 3.* Vagabonds, Beggars, &c. taken by the Constable are to be carried before the next Justice or Mayor of a Corporation, to be examined; and thereupon they are either to be sent to the House of Correction, or to such Town of the next County as the Justice shall think fit; with a Certificate of the Persons ordered to be conveyed, the Manner how and when, &c. And on the Backside of this Certificate is to be taxed an Allowance for Pains and Trouble, &c.

By *Stat. 12 Ann.* Justices in Liberties and Corporations are obliged to issue out their Warrants to Constables, &c. to make a Search for and apprehend Vagrants, before the Quarter-Sessions. And this Statute describes Vagrants to be all Persons pretending to be Patent-Gatherers, or Collectors for Prisons, &c. All Fencers, Bearwards, common Players of Interludes, Gypsies, Persons pretending to tell Fortunes, Persons able in Body, who run away and leave their Families to the Parish, and all other idle Persons wandering and begging.

A Reward of 2 s. is ordered for the Apprehension of every Vagrant, &c. And a Penalty of

10 s.

10 s. for any Person's neglecting to apprehend them, being charged by a Justice, &c.

See Chap. LIII. &c.

CHAP. XLI.

The Authority of a Mayor as to Weights and Measures.

Cities, Towns, Boroughs, &c. are to have a common Ballance, and sealed Weights, under the Penalty of 10 l. the City, 4 l. the Borough, and 40 s. the Town; a common Bushel is also to be sealed. And Mayors, &c. are to provide a Mark for the Sealing of Weights and Measures, having an Allowance of 1 d for sealing every Bushel, and 100 Weight; and a half Penny for every other less Measure, &c. Stat. 8 H. 6. 11. H. 7. &c.

Mayors, &c. sealing Weights not agreeable to the Standard incur the Penalty of 5 l. permitting Persons to sell by Measures not sealed, &c. is liable to the same Penalty: And if they refuse to seal Weights and Measures, they shall forfeit 40 s. 7 H. 7 c. 11.

They are to cause quart and pint Pots for the selling of Ale to be examined, whether they hold their full Measure; and to mark them under the Penalty of 5 l. Stat. 11 & 12 W. 3. And Persons selling Ale in Vessels under Measure, not marked, &c. shall forfeit a Penalty not exceeding 40 s. nor under 10 s. Stat. *ibid.*

By the ancient Statutes Mayors are to punish Offenders using false Weights and Measures; burn the Measures, and inflict a Penalty of 6 s. 8 d. &c.

C H A P. XLII.

The Constable his Oath, and other Things concerning his Office, &c.

I Shall now proceed to the Office and Duty of a High-Constable, Petty-Constable, Headborough, Tything-Man, &c. in the Discharge of the many weighty Affairs that they are obliged to undertake ; and to give some Directions how to act on the several Occasions.

The High Constable is as it were an Overseer or Director of the Petty-Constables, Headboroughs, or Tything-men, which are chosen under him, in the respective Towns, Villages, or Precincts, within his Hundred, or such Franchises as are under his Jurisdiction, by the Consent of the Inhabitants, or the Majority of them, and their Duty is to execute the High Constable's Office in his Absence, in keeping the Peace and good Order in their respective Limits ; and upon the High-Constable's Order, to be aiding and assisting to him so far as concerns his Office. And now since both these are necessarily sworn upon entering upon their respective Offices, it will be requisite for the better understanding of what they undertake, to set down the Form of their respective Oaths before the Justices, &c.

The Oath to be taken by a High-Constable.

YOU shall swear, That you shall well and truly serve our Sovereign Lord the King, in the Office of a Constable. You shall see and cause the Peace to be well and truly kept and pre-

preserved so far as in your Power lieth. You shall arrest all such Persons as in your Sight or Presence shall ride, or go armed offensively, or shall commit or make any Riot, Affray, or any other Breach of His Majesty's Peace. You shall do your best Endeavour, upon Complaint to you made, to apprehend all Felons, and Rioters, or Persons riotously assembled; and if any such Offenders shall make Resistance with Force, you shall levy Hue and Cry, and shall pursue them till they be taken. You shall do your best Endeavour that the Watch in and about your Hundred be duly kept for the apprehending Vagabonds, Rogues, Night-walkers, Eaves Droppers, Scouts, and other suspected Persons, and of such as go armed and the like. And that Hue and Cry be duly raised and pursued, according to the Statute of *Winchester*, against Murtherers, Thieves, and other Felons. And that the Statutes made for Rogues, Vagabonds, and such other idle Persons as come within your Bounds and Limits, be duly put in Execution. You shall have a watchful Eye upon such Persons as shall maintain or keep any common House, or Place, where any unlawful Game is or shall be used: As also to such as shall frequent such Places, or shall use or exercise any unlawful Games there or elsewhere, contrary to the Statutes. At your Sessions, Assize, or Leets, you shall present all and every the Offences done contrary to the Statutes of the 1st, 4th, and 21st of *James I* to restrain the inordinate haunting and tippling in Inns, Alehouses, and other Victualling houses, and for the repressing Drunkenness. You shall there likewise true Presentment make of all Blood-sheddings, Affrays, Out-cries, Rescous, and other Offences committed or done against the Peace within your

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Limits. You shall once every Year, during your Office, present at the Quarter-Sessions all Popish Recusants within your Liberty, and their Children above nine Years old, and their Servants, (*viz.* their monthly Absence from the Church) 3 *Jac.* 1. *cap.* 4. You shall well and duly execute all Precepts and Warrants to you directed from the Justices of the Peace of the County, or superior Officers. In Time of Hay or Corn Harvest, upon Request, you shall cause all Persons meet, to serve by the Day, for the mowing, reaping, or getting in of Corn or Hay. You shall in *Easter Week* cause your Parishioners to chuse Surveyors for the mending the Highways in your Parish or Liberty: And you shall well and duly, according to your Knowledge, Power and Ability, do and execute all other Things belonging to the Office and Duty of a *Constable*, so long as you shall continue in the said Office.

By this Tenor of the Oath a Constable may gain a considerable Knowledge in what he is to do, in the Management and Execution of his Office; being as it were an Epitome of what I shall hereafter set down more intelligibly and plainly to be understood: But this Oath is often administered in abstract to a Petty-Constable, Tything-Man, &c. thus:

The Petty-Constable, &c. his Oath.

YOU shall swear, That you will well and truly execute the Office of a *Tything-Man* of the Tything of B. (or Headborough, &c.) His Majesty's Peace you shall keep, and see it kept in others as much as in you lieth: In the Presence of the *High Constable* you shall be aiding and assisting to him; and in his Absence you shall execute his Office, according to your Power and

Know-

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Knowledge, till another be chosen in your Place, or you be legally discharged. *So help you G O D.*

The High-Constables in their respective Hundreds are Conservators of the Peace at Common Law, as are the Petty-Constables in their respective Towns and Liberties, and have a large Power to support them in the Execution of their Office, if they proceed within the Bounds of it; for it is so ordered, That if an Action be brought against a Constable, Headborough, &c. or their Assistants, for any Thing done by reason of their respective Offices, they may plead the General Issue, and give the Special Matter in Evidence. 7 Jac. 1. c. 5. 21 Jac. 1. cap. 22. *Wingate's Abridg. Stat. Tit. Evidence, &c.* And if it so happen any Action be brought against one or more of them, it is so provided, that it shall be laid in the County where the Fact commenced; and if the Verdict pass for the Defendant, he is to have double Costs; and this to be recovered as other Defendants recover their Costs, by 7 Jac. 1. cap. 5. 21 Jac. cap. 12. *Wing. Abridg. Stat. Tit. Evidence.*

For indeed a Constable legally chosen is compelled to serve the Office, being a fit Man, able of Body, and in Substance; and it would go hard, if for every trivial Slip he should run the Risque of being ruined by vexatious Suits; for if a Constable, &c. legally elected to the Office, do refuse to serve and take the Oaths, unless a Quaker, (and then, according to the late Statute for taking the Oaths, &c. his Affirmation will hold good in Lieu of an Oath) he may be bound over by the Justices to the next Sessions or Assize, and there prosecuted for a Contempt. Attornies, Clergymen, Justices of the Peace, In-

fants,

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fants, Lawyers, Physicians, poor, old and impotent Persons are exempt from serving as Constables.

But passing over these, I come now to direct the Constable, &c. in the more material Parts of his Office, wherein he may readily order and manage his Affairs in Discharge of his Duty, without running into Inconveniences or Hazards that may bring Trouble and Charges upon him: For whatever the Opinion of some is, a Constable is no more a privileged Man than any other, where he exceeds the Bounds of his Office in unaccountable Actions. And the first Particular I shall offer, is his Duty in serving of Warrants directed to him by Justices in Commission for the Peace, or other Magistrates having Power to grant Warrants, and how far they may be safe in this, and where they may err.

C H A P. XLIII.

The Office and Duty of a Constable, Headborough, &c. in serving or executing Warrants, &c.

IF a Warrant be brought to a Constable, or other sworn Officer, his safest Way is to charge the Party making the Complaint to assist him in the King's Name, and shew him the Party or Parties mentioned in the Warrant, unless himself be well acquainted with him or them, lest a Mistake by the Names agreeing may run him into an Error in taking the wrong Party; and if he be a sworn known Officer, he may refuse to shew his Warrant; but must declare to the Party he goes to arrest, what is therein charged against him; but it is otherwise where a Warrant is given to be serv'd by one who is not a known sworn Officer, as a Justice's Servant, &c. for there, upon Demand, he must produce the
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Warrant, or the Party on whom it is served may refuse to obey, and lawfully resist.

If a Constable arrest a Man or Woman in the King's Name pretending he has a Warrant, and at that Time has none, but presently goes and gets one, the Party may bring an Action of false Imprisonment against him, and recover such Damages with Cost as shall be awarded. *Coke 6. 69.*

If a Constable have a Warrant against *A. B.* the Son of *L. B.* and he takes into his Custody *A. B.* the Son of *R. B.* though he happen to be the Offender against whom the Complaint was made, yet he goes from his Warrant, and doing thereby an unjustifiable Action, there lies an Action of false Imprisonment against him. *10 E. 4. Fol. 12.*

If a Constable arrests a Man with a Warrant from a Justice of the Peace, and having him in Custody, takes his Word to come again another Time; by his so dismissing him the Warrant is void, and cannot be served again. But if a Rescue be made, or the Prisoner escapes without the Officer's Consent, then upon fresh Pursuit he may take him with the same Warrant as often as he is rescued or escapes, and may pursue him into another Town or County, though he be out of Sight. *Crompt. 214. a. and 184. Gro. 53. 14.*

If a Justice send a Warrant for a Matter wherein he hath Jurisdiction, though he goes beyond his Authority, yet the Officer is bound to obey it, and his producing his Warrant saves himself harmless, the Justice being then to answer for it; but on the contrary, if a Justice issues out a Warrant for a Matter out of his Jurisdiction, where he is no Judge of the Cause, the

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Constable is not bound to obey it; for he is bound to take Notice of the Jurisdiction and Authority of the Judge; and where the Justice, as is said, can be no Judge of the Matter charged in the Warrant, he is no more bound to obey him than if he had no Commission. 14 Hen. 8. Co. 10. 16.

If a Warrant be directed to an Officer to serve on a Person for ordinary Matters, the Warrant not specifying the Cause, but only to answer to all such Matters as shall be objected against him or her; this is held to be an illegal Warrant, and the Officer that executes it lies liable to an Action of false Imprisonment. *Coke's Institutes, Part 4. Tit. de Frangent. Prison.* However Warrants for Treason, or such as are granted by the Lords of the Privy-Council, Secretaries of State, or the Lord Chief Justice of *England*; these need not set forth the Cause, by reason they are usually granted on Matters of great Importance, where Secrecy is required.

If any Party be taken by a legal Warrant and make Resistance, the Constable in the King's Name may command Assistance; and if the resisting Party be beaten or wounded, he shall have no Remedy; but if the Constable or any of his Assistants be beaten or wounded, the Party is indictable, as likewise liable to an Action at Common Law; and if any of them die of the Beating and Wounds within twelve Months. it is Murder.

Persons refusing to assist a known sworn Officer charging them in the King's Name, lie liable to be bound over to the Sessions, and fined at the Discretion of the Justices; and the like for those that shall contemn or abuse a Justice's Warrant, by rearing, treading under Foot, or any Way.

Way defacing it, &c. over and above being bound to their Good Behaviour; for it is a Contempt against the King's Process. *Crompt. 144.*

C H A P. XLIV.

The Office of a Constable, &c. relating to Affrays, &c

IF a Constable be present at an Affray, he may command the Standers-by in the King's Name to assist him in keeping the Peace, and upon Complaint of the Constable, the Inquest may indict the Party refusing, who may be fined by the Justices at their Sessions for refusing to do his Duty.

If a Constable, or other such like Officer, be present when one Man or Woman assaults another, or with violent Words threatens to beat or kill any one, and be in a Fury ready to break the Peace: In such Case, the Constable, Headborough, &c. may commit the Offenders to the Stocks, or some other safe Place of Custody, till he can carry them before a Justice, who may, upon Complaint, compel them to find Sureties for the Peace, or Good Behaviour; and for Want of such Sureties, commit them to Prison. 3 *Hen. 4. 9. & 10. Bacon's Use of the Law, &c.*

Where any Affray is like to be, the Constable in the King's Name may command them to depart, on Pain of Imprisonment; and if they refuse he may take them into Custody, or indict such as refuse, if any Harm be done, at the next Sessions; and if a Constable be present at an Affray, and does not his Endeavour to prevent it and seize the Offenders, he lies liable, upon a Presentment of the Jury, to be fined. *Dalton's Justice of the Peace, cap. 1. fol. 4, 5.*

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A Constable may resist the Affrayers after Proclamation made to depart. and compel them to it by Force; and if he, or any of his Assistants be wounded, they have their Remedy by Statute and Common Law; and if killed, or dying of their Wounds, it is Murder in the Affrayers. *Lamb. 135. 1 Hen. 7. 7. 3 Hen. 7, 10.*

If the Affrayers be in a House, the Doors locked or bolted, the Constable may break them open to keep the Peace, tho' none have taken Hurt; and if they fly into another House, the Constable upon fresh Pursuit may break into that House to apprehend them, and so till they shall be taken. *Lamb. 125. 7 Edw. 3. 19.*

If any be dangerously hurt in an Affray tho' the Constable be not present at the Affray, yet may he seize the Offenders and carry them before a Justice of the Peace, who is to require Sureties of them; or the Wounds being supposed mortal, to commit them to Prison, till it be certified by Chirurgeons or Physicians, whether the Party will live or die. *Dalt. Just. P. c. 8. fol. 33.*

After the Affray is over, the Constable not being present at it, cannot seize them without Warrant, unless some one be dangerously wounded, and much Blood drawn. If Affrayers escape into another County, or Franchise, a Constable upon fresh Pursuit may seize them there, and carry them before a Justice of the Peace of the same County, to find Sureties for the Peace; but then he must see the Affray.

All Contests are not properly Affrays; for to make it such, there must be some Blows given, or offered to be given; for hasty Words will not warrant an Affray, unless they threaten to beat, kill, or wound one another. *Dalt. Just. P. c. 8. fol. 34. 38 Hen. 8.*

CHAP. XLV.

The Constable's Office relating to Arrests, or Escapes of Prisoners, Felons, &c.

UPON a Constable's, or any sworn Officer of the Peace, having arrested a Felon, or taken any Person into Custody on Suspicion thereof, and he is conniving at his Escape, or giveth him Leave to go out of his Custody at Liberty, so that he does escape, it is no Felony in the Prisoner, but it lies upon the Constable, and he must answer for it; but if the Prisoner escape without the Constable's Consent, he is then guilty of Felony, and the Constable fineable for his Negligence.

If a Constable by his Negligence let a Prisoner in his Custody have Opportunity to make away with himself, by stabbing, drowning, or any violent Death, he is fineable. *Dalt. Just. P. c. 1, 6. fol. 272.*

Where a Felony is committed, and one is taken by a Constable on Suspicion of committing it, though afterward the Constable be very well satisfied he is innocent, yet he may not discharge him without carrying him before a Justice of the Peace; for being once taken into Custody, he must be delivered by due Course of Law: Nor may a Constable suffer the Compounding any Felony; or if it be done after he arrests the Party or before, he is to declare his Knowledge of such Compounding before the Justice, or for conniving to extenuate the Fact, and set the Prisoner at Liberty, he is fineable: and

and some hold he may be brought in as an Accessary.

A Constable may use all lawful Means to secure his Prisoner, as setting him in the Stocks, or putting Irons on him if he be unruly, till he can carry him before a Justice; or pinion his Hands behind him with Cords, to prevent his Escape in carrying him thither, or to Prison.

If the Gaoler will not receive a Prisoner of a Constable where he is lawfully committed, he must not however let him go, but bring him back to the Town or Village where he was taken, or where the Constable dwells, and the Town where he was taken shall be at the Charge of keeping him until the next Gaol-Delivery, to be raised by Way of Tax among the Inhabitants, if the Prisoner has no Money or Goods to defray it; and in such Case, the Gaoler shall be punished by the Justices in their Sessions or Assize, for his Refusal and Contempt. If there be much Charge in carrying a Prisoner to Gaol, the Inhabitants where he was taken may be obliged to contribute to it, to be levied by such of the principal Inhabitants as shall be thereunto appointed at their Discretion.

In what Cases Constables, &c. may break open Houses which are shut, &c.

1. For apprehending any Person for Treason, Felony, or Suspicion of Felony. *Coke 5 Rep. 92.*

2. Where one hath dangerously wounded another, and then flies into an House, there the Constable, or other Officer, on fresh Suit, may break the Door and apprehend the Offender. *Dalt. 204.*

3. Where

3. Where there shall be an Affray made in an House, and the Doors are shut, the Constable may break the House to see the Peace kept.

4. Upon a Warrant or Process against a Person excommunicated, the Officer may break open the House. 3 Jac. 1. c. 4.

5. In all Cases where the King is Party, or hath Interest in the Matter, the Officers may break the Doors. Coke 5 Rep. 91. *Seamaine's Case*.

The Constable or other Officer may not imprison any Man in his House, but in the Stocks, and this not beyond such reasonable Time as he may provide convenient Aid, safely to convey the Prisoner to the Justice or Gaol. *Finch's Ley*.

And yet, in case of an Affray, the Constable may for a Time imprison the Offender (being a Man of Quality) in the Constable's own House, or may commit him to any other safe Custody.

If a private Man takes a Felon, or takes one upon Suspicion of Felony, within the Precinct of any Constable, &c. and brings the Prisoner to the Officer of the Place; in this Case the Officer is bound to see the Prisoner safe conveyed to the Gaol; and if he suffer him to escape, he shall answer for him. *Crompt. p. 201.*

C H A P. XLVI.

The Office of a Constable, &c. in relation to Hue and Cry, and how he must discharge his Duty therein.

WHen a Hue-and-Cry is issued out, whether for Robbery, Murder, &c. when it comes to the Hands of a Constable, Headborough, Tything-man, &c. they must forthwith make diligent Search in all suspected Houses, Barns, and Out-houses, and other Houses, at their Discretion, and all Places within their Liberty or Precincts; and have Power to stop any suspected, as in Search or Pursuit they shall find or suspect to have done the Fact, comparing him or her, or their Horses, with the Description given in the Hue and Cry; and if Cause be found, to carry the Party before the next Justice of the Peace in the County where taken, there to be strictly examined where he or they were at the Time of the Fact committed; and for the Neglect of this Duty, the Officer lies liable to be fined by the Justices in Sessions, and Search being diligently made, must, without Delay, send it to the next Constable or Officer of the Peace, unless the Party or Parties be taken who are known to have committed the Fact mentioned therein. *Dalt. Just. P. c. 28. fol. 75.*

Where a Robbery is committed in a Hundred, and the Hundred is sued for it, though the Damages are recovered against one or two of the said Hundred, yet they are not to bear the Charge, but the rest must proportionably contribute according to their Ability; and two Justices

Justices of the Peace, one to be of the *Quorum*, dwelling in or near to the said Hundred, may set a Tax on every Parish within it, and then it is the Duty of the Constable or Tything-man of each Parish to settle the gross Tax proportionably on the Inhabitants in particular, and may upon Refusal of Payment make Distress and Sale of Goods, delivering the Overplus, on due Appraisalment, to the Owner; and the Money so collected is to be put into the Hands of the Justices, or some of them that made the Rate, within ten Days after, according to 27 *El. cap. 13*, &c.

If fresh Pursuit on the Hue and Cry shall cease in any Hundred, it is liable to pay half the Damages to the Hundred wherein the Robbery was committed, to be recovered by Action in any of His Majesty's Courts at *Westminster*, at the Suit of the Clerk of the Peace for the County; and though in the mean Time he die or be changed, the Suit shall not fall or abate; and when so recovered, it is to be levied on the Inhabitants by Way of Tax, as the former. 27 *Eliz. cap. 13*.

If any one of the Robbers be apprehended, and brought to Justice and convicted, it saves the Hundred their Money, because it is looked on they have regard to Watching the Roads for the secure Travelling of Passengers. Also when the Action is not brought within one Year after the Robbery committed.

The Robbery must be committed in the King's Highway, between Sun-rise and Sun-set, and Oath made of it, with the Sum lost, before the next Justice of the Peace, with all convenient Speed. The Hue and Cry thereupon issued out, must be made with Horse and Foot, or else it is held

held illegal. *Eraston, Book 3. Folio 121. Dale. Just. P. fol. 133.*

Who so goes not armed, and fitly prepared, at the Command of the Sheriff or Constable, when the Hue and Cry is issued, (to arrest the Robbers or Felons) after Attainder, may be fined, and imprisoned. *Westm. c. 9. Coke's Second Part of Institutes, fol. 172.*

C H A P. XLVII.

The Constable's Office, &c. in what more particularly relates to the Conservation of the Peace.

THOUGH a Constable may do his Endeavour to keep the Peace, yet if it be broken, he cannot take Surety for it at the Request of any one. *H. 7. fol. 18.*

Before a Warrant of the Peace be served, the Constable or other Officer ought to acquaint the Party with it, and charge him in the King's Name to go along with him to put in Sureties, if required; and if he refuse so to do, then to compel him to do it; and if it be an unreasonable Time, that the Justice be in Bed, or not to be found, he may secure him under a Guard, or in Prison, if he will be so rigorous, till he can convey him before a Justice, and is not bound to run up and down from Place to Place with him, nor lose his Time in staying till the Prisoner can send for Sureties, but may immediately carry him before what Justice he pleases, and not submit it to the Prisoner's Election, nor is that of the Party that makes the Complaint, unless the Warrant be Special.

If

If a Constable have a Warrant of the Peace against a Person to find Sureties, where the Matter is palpable, the Party having Notice of it may supersede it, by putting in Surety before another Justice to answer the Complaint the next Sessions; and then if that Justice, being of the same County, send a *Supersedeas* to the Officer to discharge further Surety, and he notwithstanding arrest the Party to find Surety, or imprison him, he may bring his Action of False Imprisonment against the said Constable, or for the like Contempt of the Officer upon a *Supersedeas* out of Chancery, or the King's Bench; for a *Supersedeas* is a Discharge of the former Warrant *Dalt. Just. P. cap. 69. fol. 158.*

Upon Notice given to a Constable or other Peace Officer, or if it be upon his or their own Knowledge, that a Man or Woman adulterously cohabit together, or live in Fornication, being of evil Report, he may search any suspected House for them, wherein he is informed or knows they are in the Night-time, and there apprehend them, and carry them before a Magistrate to find Sureties for their Good Behaviour. *13 Hen. 7. 10. Just. P. cap. 75. fol. 189.*

If any one abuse or affront a Constable in the Execution of his Office, either by Word or Action, he may have him bound over to the Good Behaviour for such his Offence, and fined before the Justices in their Sessions, as they see fit upon Proof, &c. *Fitz. 207. Crompt. 135.*

All injurious Force and Violence used against the Person, Lands, Goods, or other Possessions, or Chattels of a Man or Woman, is held a Breach of the Peace, whether it be by threatening Words, Gestures, or bodily Force. *Dalt. cap. 3. fol. 9.*

Note, Upon any Disputes in an Alehouse or Tavern, &c. about paying the Reckoning, and the Parties offer to make their Escapes without paying, if there be no Swords drawn, Beating, Wounding, or visible Breach of the Peace, the Constable is not bound to go, tho' sent for, nor is it warrantable for him to arrest and carry them before a Justice, unless a Warrant be put into his Hand, for this is only a Debt, and the Party aggrieved must bring his Action for the Credit he gave for the Viſtuals or Drink, &c. being freely delivered by his Consent; and those Constables that are over-officious to trouble themselves this Way, may bring themselves into Trouble, and be laughed at by those that set them on Work.

No Warrant, &c. shall be served on the Lord's Day, commonly called *Sunday*, except for Felony, Treason, or the Breach of the Peace, for otherwise the Service shall be void; and the Party serving it shall be obliged to answer Damages, as if no Warrant had been. to the Party who is arrested and detained by such a Warrant on the Lord's Day. 29 Car. 2. cap. 7.

C H A P. XLVIII.

The Office of a Constable, &c. relating to the strict Observance of the Lords's Day.

IF any Butcher kill and sell any Viſtuals on the Lord's Day, or any one do it for him, the Constable, by Distress and Sale of his Goods, may levy Six Shillings and Eight Pence upon Warrant from a Justice, &c. But the Complaint or Information must be made within six Weeks,
and

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and the Party thereof convicted before a Justice of Peace, Mayor or Chief Officer, upon their own View, Proof of two Witnesses, or the Party's own Confession; and they may gratify the Informer with the third Part of the Penalty. 3 *Car. 1. cap. 1. Dalt. Just. P. cap. 50. fol. 135.*

If any one on the Lord's Day be present at or keep any Shooting, Wrestling, Ringing of Bells for Pleasure, Bowling, Church-Ales, Wakes, Masks, or any Games, Sports or Pastimes whatsoever; they shall forfeit Five Shillings, if above the Age of 14, (if under that Age One Shilling) to be levied by the Constable on Sale of Goods taken in Distress, by Warrant from a Justice of Peace or Chief Magistrate, and for want of such Distress, the Offender to be set in the Stocks for the Space of three Hours: And any Carrier going, by Way of Travelling, with his Horse on this Day, or any Carrier, Waggoner or Wain-Man, going with any Cart, Waggon, Wain, or Drover with Cattle, forfeits 20 s. for every such Offence, to be levied by Distress and Sale of his or their Goods, if charged and duly convicted within six Weeks after the Offence committed, as in the Case of Butchers, and the Money shall be applied to the Use of the Parish where the Distress is first made; for though they pass thro' several Parishes, yet they are to pay but 20 s. for one Journey. 3 *Car. 1. cap. 1. Dalt. cap. 50. fol. 134.*

If any Bull-baiting or Bear-baiting, Interludes, or other unlawful Games and Pastimes of the like Nature, be held in the Parish or out of the Parish on the Lord's Day, upon Warrant to him directed, the Constable, &c. may levy 3 s. 4 d. by Distress and Sale of the Offender's Goods, rendering the Overplus to the Owner, if any

be ; or set the Party (for want of such Distress) in the Stocks by the Space of 3 Hours ; but then the Party offending must be questioned within the Space of a Month after the Offence committed. *1 Car. 1. cap. 1. Dalt. Just. P. cap. 23. fol. 6.*

None shall do any Work, Labour, or Business on the Lord's Day, (Works of Necessity and Charity only excepted) but that the Offender, if above the Age of 14 Years. or upwards, shall forfeit 5 *s.* None shall cry and expose to Sale any Wares that Day, on pain to forfeit them ; except Milk, and that before Nine in the Morning and after Four in the Afternoon. No Drover, Higler, Horse-courser, Butcher, or their Servants, shall travel on the Lord's Day, upon pain of forfeiting 20 *s.* No Person shall travel on this Day on Horseback, or with Bort or Wherry, unless on extraordinary Occasions, to be allowed by a Justice of the Peace, or Head Officer of the Place, under Penalty of forfeiting 5 *s.* No Hackney-Coaches to travel that Day, unless such as are allowed by the Act of his late Majesty King *William* the Third, &c. for Licensing Hackney-Coaches, &c. *29 Car. 2. cap. 7.* And Penalties upon this Act are for the Use of the Poor of the Parish where they are levied, or the Offence committed, saving the Justice or other Head Officer may reward the Informer with a Third Part : And further note, That the Prosecution of this Act must be made within 10 Days after the Fact committed.

Dressing Meat in Inns, Cook Shops, and private Families, is not prohibited on the Lord's Day, by the Stat. of *29 Car. 2.* And for the better Encouragement of the Mackerel Fishery, they are, in the Season, to be sold on this Day but before and after Sermon only.

C H A P. XLIX.

The Office of a Constable, as to what he is to do relating to Popish Recusants and Conventicles.

ALL Persons exceeding sixteen Years of Age, being Popish Recusants, must within forty Days after Conviction repair to their usual and known Dwellings, and not remove five Miles thence, under the Penalty of forfeiting all their Goods, Lands and Chattels, Annuities, &c. during Life; and if they can assign no certain Place of Abode, then they are to repair to the Place of their Birth, or where their Father or Mother dwell, if they are living, and in 20 Days after their Arrival give in their Names to the Minister, Constable and Headborough, in Writing, which Minister is to enter them in a Book to be kept for that Purpose, and he, with the said Officers, are to certify the same the next Quarter-Sessions; where the Justices of Peace are obliged to cause the same to be inrolled, 35 *Eliz. cap. 2. Wingate's Stat. Tit. Crown.*

Note, That the Church wardens and Constables of every Parish, or one of them, and where there are none such, the High Constables of the Hundreds, are every Year, once in the Year, at the General Sessions held for the Peace, to present Popish Recusants for their Monthly Absence from Church, and return the Names of their Children above nine Years of Age, being then with their Parents; also their Servants, together with the Age of their Children as near as they can compute, or to forfeit 20 s. for every such Default; which Presentments the Town-Clerks, or Clerks of the Peace, are to record

without taking Fees for them, under a Penalty of 40 s. 3 *Jac. 1. cap. 4. Wingate's Statutes, Tit. Crown.* And if the Minister, Petty Constable, and Church-wardens of any Parish, shall make a Complaint to the Justice of Peace, That he or they suspect such a one to be a Popish Recusant, but have no Proof of it, then the Justice may tender the Party the Oaths in that Case appointed; and upon Refusal, if above the Age of 18, he may commit the Party to Prison till the next Assize; and then if again refuses, it is a *Præmunire* in a Man, but a Woman Covert shall only suffer Imprisonment, and remain without Bail till she take the Oath of Allegiance, &c. 7 *Jac. 1. cap. 7. Wingate's Stat. Tit. Crown. Dalt. Just. P. cap. 45. fol. 108.*

By a Statute the first of K. William and Q. Mary, no Papist, or reputed Papist refusing to make and subscribe the Declaration they are obliged to by 30 *Car. 2.* and the Oaths enjoined in an Act for removing all Questions, &c. about the assembling and sitting of this present Parliament, shall, at any Time after the 15th Day of May, 1629, have, or keep in his own Possession, or at his Disposal, any Horse or Horses, valued above five Pounds; if he does, they are to be sold; and that any two or more Justices of the Peace, by a Warrant under their Hands and Seals, may or shall authorize any Person, or Number of Persons, assisted by a Constable or his Deputy, Headborough or Tythingman, who are hereby required to be aiding and assisting, to search for and seize, to the Use of His Majesty and His Successors, all such Horses above five Pounds Value, as aforesaid.

And further note, That at any Time a Proclamation being issued out to remove Papists at
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a Distance from the Cities of *London* and *Westminster*, other Cities and Towns Corporate; the Constables by Warrant from the Justices of Peace are to make diligent Search, and give in the Names and Places of Abode of such as stay beyond the Time limited, that so they may be prosecuted for their Contempt.

And, That ignorant Persons may not be mistaken, by bearing too much upon the Act made in the First Year of K. W. & Q. M. for exempting Their Majesties Protestant Subjects dissenting from the Church of *England*, from the Penalty mentioned in the 35th of *Elizabeth*, and 22 *Car.* 2. It is thereby enacted, That all Persons that take the Oaths, and make and subscribe the Declaration therein mentioned, shall not be liable to the Penalty of the Two former Penal Acts against Conventicles: (By which Persons assembled are liable to be fined 5 s. for the first Offence, 10 s. for the second, and Preachers 20 l. &c.) However, if any such Assembly of Persons dissenting from the Church of *England*, meet for Religious Worship, with the Doors locked, barred, or bolted, during any Times of such Meeting together; all and every such Person or Persons that shall come to, and be at such Meeting, shall not receive any Benefit from the new Law, but be liable to all the Pains and Penalties recited in the Statute of 35 *Eliz.* and 22 *Car.* 2. for such their close and concealed Meeting.

And further, If any Person, differing from the Church of *England*, a Protestant Dissenter, shall be chosen to the Office of High Constable, Petty Constable, Church-warden, or Overseer of the Poor, or any Parochial or Ward Office; any such Person that shall scruple to take upon him any of the said Offices, in regard of the

said Oaths, or any other Matter or Thing required by the Law to be taken or done in respect of such Office, may execute the said Office or Offices by a sufficient Deputy, by him to be provided, that will comply in taking the Oath, &c. and such a one as shall be well approved.

Note, That the People called *Quakers*, in case of Oaths, may tender their Affirmation, by Vertue of a late Act of *K. William the Third*, and that in Breach of such Affirmation they incur the Penalties as in case of Perjury.

C H A P. L.

A Constable's Office relating to such as shall disturb Ministers in Time of Divine Service, &c.

TO keep Peace and Decency^d in Churches, Chapels, and such like Places of Divine Worship.

Note, That if any one shall disturb a Preacher, lawfully licensed, Preaching, Praying, or at the Administration of the Sacrament, either by entering into Dispute, Humming, Talking, Laughing, or any voluntary Disturbance, any Constable, or Church-warden of the Place is authorized immediately to apprehend him or her so offending, and carry the Party before a Justice of the Peace of the same County, who may commit the Offender to safe Custody, and within six Days, conjunct with another Justice of the Peace, examine the Matter; and if it be evidently proved by two Witnesses, commit him or her to the Common Gaol, there to remain by the Space of three Months, and from thence to the

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the next Quarter Sessions; where, upon the Offender's Reconciliation, and enrring into good Security for his good Abearing, by the Space of one whole Year, he may be released; but upon standing in Contempt, and remaining obstinate, he shall be continued in Prison without Bail, &c. 1 Mar. 1. Sess 3. c. 3: *Wingate's Stat. Tit. Sacraments, &c.*

And any one rescuing such an Offender, shall suffer the like Imprisonment, and over and above forfeit $\text{5} \text{ l.}$ And the Inhabitants suffering such an Offender to escape, upon Presentments before the Justices in their Sessions of the Corporation or County, by the Authority aforesaid, are liable to forfeit five Pounds.

CHAP. LI.

The Duty and Office of a Constable in any Calamitous Time of Plague and Pestilence, &c. and what relates to Physicians.

IF Persons infected with the Plague, be by the Constable commanded to keep their Houses, and yet contemptuously go Abroad and converse with other People, then having the Plague-Sores upon them; it is Felony, and if infected, and not having the Plague-Sore, yet for such Offences they are liable to be punished as Vagabonds, by the Order or Appointment of a single Justice of Peace, and further be bound to the Good Behaviour for the Space of one whole Year, upon Proof of the Infection at the Time he or she so offends. 1 Jac 1. cap 13. *Wingate's Stat. Tit. Plague. Dalt. Just. P. cap. 39. fol 91.*

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If a Constable, or such other Officer whom it concerns, shall neglect to levy the Money by Warrant, under the Hands and Seals of two Justices of the Peace, upon the Statute for the Relief of any Town or Place infected with the Plague, by Distress and Sale of the Goods of such Persons as refuse to pay, on such Emergency for every such Offence, the said Officers are liable to forfeit 10 s. to be distributed among the Sick, as by the Statute is directed. 1 Jac, 1. cap. 13. *Dalt. Just. P. cap. 39. fol. 91. Wingate's Stat. Tit. Plague.*

The Justices of Peace, one or more of them, are to appoint in their several Limits, Watchmen, Keepers, Searchers and Buriers; as likewise may the Head-Officers in Towns and Corporations do the same. And if any infected Person, contrary to the Commandment of the Justice, Constable, or other Head Officer, &c. shall wilfully attempt to go abroad, and resist their Keepers or Watchmen, they may restrain them by Violence, and compel them by Force to keep their Houses; and if they be hurt or wounded, the Watchman shall not be troubled for it, because it was their Duty, after such Warning, to have kept their Houses. 1 Jac. 1. cap. 13. *Crompt. 122. &c. Dalt. Just. P. cap. 39. fol. 91. Wingate's Stat. Tit. Plague.*

Constables and other Officers in London are to be aiding and assisting to the President of the College of Physicians, and all Persons authorized by the College, for the due Execution of the Laws and Statutes relating to the said College. *Stat. 1 M. 14 H. 8.*

C H A P. LII.

The Office of a Constable, &c. relating to Routs and Riots, and what they are.

THE Power of a Constable in Disorders of this Kind is very great, and it is his Business to be diligent in suppressing them; as also that of the Sheriffs, and others the King's Officers, by reason such Tumults are of dangerous Consequence to the Government; and many Times, as it has been known, from small Beginnings broke into open Rebellions, and disturbed the Peace of the whole Kingdom: And therefore,

Where three or more Persons shall meet and assemble themselves together, to the Intent to do any unlawful Act, with Violence or Force against the Person of another, his Possessions or Goods; as to beat, kill, or otherwise to hurt, or without Authority to imprison a Man in his own House, or elsewhere; to pull down a Wall, Pale, House, Hedge, Ditch, or wrongfully to enter upon, or into the Possession of another Man's House or Land, &c. Or without Right, to cut or take away Wood, Corn, Grass, or other Goods; or unlawfully to hunt in any Warren or Park, or with Force or Violence do any other unlawful Act against the King's Peace, to the manifest Terror of the People. And if they only meet to such Intent or Purpose, though they afterwards depart of their own Accord, without putting their Intention in Execution; it is nevertheless an unlawful Assembly, by reason their first Intention, which

occasioned them so to assemble, was with an evil Design. *Bro. Tit. Riots* 4, 5. Co. 3 *Part Institutes*, fol. 176. *Dalt. Just. P. cap.* 85. fol. 217. *Stat. 27 Rich. 2. cap.* 8.

The new Act for suppressing of Riots.

THE Statute 1 *Geo.* for suppressing of Riots, enacts, That if any Persons to the Number of twelve shall riotously assemble together to the Disturbance of the Peace; and being required by a Justice of Peace, Sheriff, Mayor, Bailiff, or other Head-Officer of any Town-corporate, by Proclamation, immediately to disperse, shall continue together one Hour after such Proclamation made, they shall be guilty of Felony, without Benefit of Clergy: And Justices of the Peace, Sheriffs, Mayors, Bailiffs, High and Petty Constables, and other Peace-Officers, are to command Assistance, and seize and apprehend such Rioters, &c. And if the Rioters are kill'd or wounded in apprehending, the Persons concern'd shall be indemnified.

Rioters pulling down or demolishing any Church, Chapel, Dwelling House, &c. are also guilty of Felony. Hindering the Proclamation for Rioters to disperse, or hurting any Person going to do the same, is likewise made Felony: And Persons continuing together an Hour, after such Hinderance is the same. *Stat. 1b.*

The Proclamation.

OUR Sovereign Lord the King charges and commands all Persons assembled immediately to disperse themselves, and peaceably depart to their Habitations, upon Pain of Im-
pri-

prisonment, &c. or of incurring the Penalties inflicted by a Statute made in the first Year of the Reign of King George.

CHAP. LIII.

The Office of a Constable, in what relates to Rogues, Vagabonds, sturdy Beggars, &c.

TO ease the Kingdom of lazy Persons w^ho loiter about and decline working, in Expectation to live upon others Labours, by Begging or Pilfering, the Law has in the following Manner provided against such Nuisances.

By Stat. 12 Ann. c. 23. it is enacted, That if any Vagabond shall be found in any Parish wandering, begging, &c. the Constable or other Officer, &c. are to apprehend such Vagabond, and convey him before a Justice of Peace; and the Justice may order a Reward of 2 s. to be paid by the Constable or other Officer where such Rogue was found begging, and pass'd unapprehended.

The Justice is to examine and inform himself of the Condition, Circumstances, Place of Abode or Birth of the Vagrant; and if it appears such Vagrant hath obtain'd any legal Settlement, he shall be sent to the Place of Settlement; but if not, he shall be sent by Pass directed to the Constable, to the Place of Birth; or if under 14 to the Abode of his Father or Mother, if he has any living, and it can be known; and if not known, then to the Parish where found last begging, and he pass'd unapprehended.

If a Vagrant has obtain'd a legal Settlement, he may be ordered by the Justice to be whipp'd,
or

or sent to the House of Correction, before pass-
ed, if the Justice thinks fit: And if a Justice
shall see cause to adjudge any Vagabond to be
dangerous to the People, he may commit him to
the House of Correction till the next Quarter-
Sessions, where if he is judged incorrigible, he
is to be publicly whipped three Market-Days,
at some Market-Town near, and be kept to hard
Labour as long as the Justices think fit.

The Justice who makes the Pass, shall with it
deliver to the Constable a Certificate, ascertaining
how the Person is to be conveyed, by Horse,
Cart, or on Foot, whither, in what Time, and
what Allowance is to be made to the Constable
for conveying the Person to the Place he is to
pass him. The Constable is to convey the Va-
grant the next direct Way to the Place or-
dered; and if it be not in the same County, to
the first Town of the next County named in the
Pass, &c. and there deliver him to the Constable,
with the Pass, taking his Receipt; and the se-
cond Constable is to do as the former, &c. where-
by the Vagrant is to be convey'd from one
County or Precinct to another, till brought to
the Place first ordered.

Justices in their Quarter-Sessions are to ap-
point Allowances *per* Mile, or otherwise for
passing and maintaining of Vagrants; and cause
Money to be raised for that Purpose, as for
County-Gaols and Bridges. Justices are to ex-
amine Constables, &c. on Oath, and if it appear
they have neglected their Duty, they shall for-
feit their Allowance.

The Place to which any Vagrant shall be
convey'd, shall employ him in some Work-house
or Almshouse till he takes to some Service:
And if Vagrants refuse to work, they shall be sent

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to the House of Correction. Incurrible Rogues, &c. are to be placed Apprentices for 7 Years to Persons living in the Plantations, or Factories abroad. Masters of Ships importing Vagrants to forfeit 5 *l.* each. Constables neglecting their Duty in apprehending, punishing or conveying Vagabonds, and others hindering it, are liable to a Forfeiture of 20 *s.*

See Chap. XL.

CHAP. LIV.

A Copy of a Testimonial, or Pass, as the Law directs.

N. T. a sturdy vagrant Beggar, aged about 30 Years, of middle Stature, black Hair, fresh coloured and round visaged, &c. was this 26th Day of *June*, in the 6th Year of the Reign of our gracious Lord King *George*, &c. openly whip'd at *D.* in the County of *C.* according to the Law, for a wandering Rogue and Vagabond, and is assigned to pass forthwith from Parish to Parish by the Officers thereof, the next strait Way to *L.* in the County of *M.* where he declareth himself to be born; and he is limited to be at *L.* aforesaid within 14 Days next ensuing the Date hereof, at his Peril. Given, &c.

If the Act of the 39th of *Elizabeth* be neglected in the Execution, by any Constable, Tythingman, Headborough, &c. he so neglecting forfeits 10 *s.* for every Default; and he that hinders any Execution of this Law upon Rogues and Vagabonds, incurs the Penalty of 5 *l.* and may be bound over to their good Behaviour:
And

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And if a Constable or Peace-Officer, who ought to do it, refuses such Rogue or Vagabond, or if he does receive him and does not carry or send him to the next Constable, in order to his being sent to the Place appointed, he forfeits for every such Offence 5 *l.* and the Justice furthermore may bind him over to his Good Behaviour. 39 *Eliz. cap. 47. fol. 128, &c.*

If any such sturdy Rogue or Vagabond shall come begging to any House, the Owner of it seeing it, is to apprehend him or her, and deliver the Offender to the next Constable, or else he forfeits 10 *s.* and the Constable is to whip and convey such Rogues as before directed, under the Penalty of 20 *s.* 1 *Jac. 1. cap. 7. Dalt. 147. fol. 128.*

By the 12 *Ann.* All loose, idle and disorderly Persons, blind, lame, &c placing themselves to beg in Streets, to the Annoyance of Passengers, or who shall be found begging, are to be removed by Constables, upon Complaint made; and if they refuse to be removed, or offend a second Time, they are to be whip'd. Constables neglecting their Duty to forfeit 10 *s.*

Two Justices of the Peace, one to be of the *Quorum*, may, by Warrant under their Hands and Seals, cause to be levied by Distress and Sale of the Offender's Goods, all Forfeitures and Fines beforementioned, the Party being first convicted either by his own Confession, or the Proof of two Witnesses before the said Justices. 39 *Eliz. cap. 4* 1 *Jac. 1. c. 7. Dalt. cap. 4. 47. fol. 149.*

Constables, Headboroughs, or Tythingmen, neglecting to make Search for Rogues or Vagabonds, upon the Justices Warrant directed to them, or to appear at their Meeting, to give up
their

their Account what Rogues, &c. they have punished, or sent to the House of Correction; or upon Neglect to send such to the House of Correction,*as by Order of Warrant are committed, the Justices at their Discretion may fine those so transgressing in a Sum not exceeding 40 s. 7 Jac. 1. cap. 4.

CHAP. LV.

The Constable's Office, in disposing of the Wives and Children of Rogues, Vagabonds, or sturdy Beggars.

THE Wife of such sturdy Rogue or Beggar, the Children being under seven Years of Age, must be placed with the Husband; and if he be dead, then the Children to be placed with the Wife in the Parish where she was born or last dwelt, and the vagrant Children exceeding seven Years of Age, must be sent to the Place of their Birth; and if with Children under seven Years of Age, the vagrant Parents are placed at the Place of the Birth of the said Children, or in the Place where they last dwelt; if afterwards the Parents or either of them happen to die or run away, leaving the said Children, yet, they once settled, must still remain in that Settlement, and ought not to be sent to the Place of their Birth, though they have attained to the Age of seven Years or upwards, according to 39 Eliz. cap. 4. Resol. Judges. Sect. 45. Dalt. Just. P. cap. 47. fol. 135.

The vagrant Wife must be sent to her Husband, though he be no other than a Servant in any Parish or Town, and a Rogue or Vagrant, not able to assign any Place of Birth, if he have
a Wife

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a Wife and Children under seven Years old, they must be sent with the said vagrant Rogue to the Parish or Town through which they by Sufferance had passed unpunished, and the Children relieved with the Work of their Parents, though they be committed to the House of Correction, if it be possible they thereby can relieve them.

C H A P. LVI.

The Duty and Office of a Constable, &c. relating to Alehouses, Inns, &c.

HE that without a Licence shall presume to keep an Alehouse, selling Ale or Beer, forfeits 20 s. to be levied by Distress and Sale of Goods, and converted to the Use of the Poor of the Parish; and this to be done by the Constable and Churchwardens by Warrant from a Justice of the Peace of the same County, and upon Distress and Sale, the Overplus to be returned to the Owner of the Goods, if any such remain; and a Constable, &c. refusing or neglecting to execute any such Warrant to him directed, forfeits for such his Contempt 40 s. upon Failure of Goods to levy the Distress upon such Alehouse-keeper, the Constable being empowered by the Warrant aforesaid, may openly whip, or cause the Offender to be whipped in his Presence; the Goods upon Distress are to be sold in three Days, the Offence to be proved before the Justice of the Peace who grants the Warrant; and the Justice, upon Default of the Constable in executing his Office relating to the Premises, may commit him to Gaol till he causes the Offender

fender to be whipped, or pay the 40 s. to the Use of the Poor. 3 *Car. 2. cap. 3. Dalt. Just. P. cap. 7. fol. 31, 32.*

If a Warrant be directed from a Justice of the Peace to a Constable and Churchwardens, against an Inn-keeper, Alehouse-keeper, or Victualler, for suffering excessive Drinking or Tippling in his House, as any Townsman or others to Tippling, or being drunk, and he neglects to do his Duty, he forfeits 10 s. to be levied by Distress and Sale of Goods, to the Use of the Poor of the Parish. See Drunkenness under Title Mayors.

If any Alehouse-keeper refuses to lodge a wayfaring Person or Traveller, he or she offering Money for the Victuals and Drink, &c. in present Pay; the Constable, upon such Refusal, may cause such Alehouse-keeper or Inn-keeper to be indicted at the Sessions or Assizes, where he may be fined or imprisoned, or the Party so refused may bring his Action on the Case; but then ready Money must have been offered before-hand, if required. *Coke 9 Rep. fol. 87. b. 10 Hen. 7, 8. Dalt. Just. P. cap. 7. fol. 28* They lie liable to Penalties also, for keeping any Gaming in their Houses or Backsides; and indeed the Laws are very strict in these Cases, to prevent Mischief and Inconveniency.

C H A P. LVII.

Observations about settling Goods distrained for Rent.

BY Stat. 2 *W. & M.* where any Goods or Chattels shall be distrained for Rent due upon any Lease or Contract, and the Tenant or Owner

Owner of the Goods so distrained shall not within 5 Days after such Distress taken, and Notice thereof (with the Cause of such Taking) left at the chief Mansion House, or other most notorious Place on the Premises charged with the Rent distrained for, replevy the same; that then in such Case, after such Distress and Notice, and Expiration of the said 5 Days, the Person distraining may, with the Sheriff or Under-Sheriff of the County, or with the Constable of the Hundred, Parish or Place where such Distress shall be taken (who are hereby required to be aiding and assisting therein) cause the Goods and Chattels so distrained to be appraised by two sworn Appraisers, whom such Sheriff or Constable is hereby empowered to swear to appraise the same truly, according to the best of their Understanding; and after such Appraisement, shall and may lawfully sell the Goods and Chattels so distrained for the best Price that can be gotten for the same, towards the Satisfaction of the Rent, and Charges of Distress, Appraisement and Sale, leaving the Overplus (if any) in the Hands of the said Sheriff or Constable, to the Owner's Use.

It shall and may be lawful to and for any Person or Persons, having Rent Arrear due upon any such Lease or Contract, to seize and secure any Sheaves or Cocks of Corn, or Corn loose in the Straw, or Hay lying in any Barn or Granary, or upon any Hovel, Stack or Rick, or otherwise, on any Part of the Land charged with such Rent, and to lock up and detain the same in the Place where they shall be found, for a Distress, until the same shall be replevied; and in Default of replevying, as aforesaid, within the Time aforesaid, to sell the same after such Appraisement:

ment: So as nevertheless such Corn, Grain or Hay, be not removed by the Person distraining, to the Damage of the Owner thereof, out of the Place where the same shall be found and seized, but be kept there (as impounded) until the same shall be replevied or sold, in Default of replevying within the Time aforesaid.

If any Rescous or Pound-Breach shall be made of such Goods, the Person grieved in a Special Action on the Case shall recover his and their treble Damages and Costs of Suit against the Offender, or against the Owner of the Goods distrained, in case the same be afterwards found to have come to his Use or Possession.

If any such Distress and Sale shall be made as aforesaid, by Colour of this present Act for Rent pretended to be due, where in Truth no Rent is due to the Person distraining, or to him in whose Name or Right such Distress shall be taken; then the Owner of such Goods distrained and sold, his Executors or Administrators, shall or may, by Action of Trespass, or upon the Case, recover double the Value of the Goods distrained and sold, with full Costs of Suit.

A Sale of Goods distrained for Rent.

THIS Indenture, &c. between J. D. of, &c. of the one Part, and T. C. of, &c. of the other Part. Whereas the said J. D. on the 19th Day of, &c. did enter into a Messuage situate in, &c. late in the Tenure or Occupation of one R. B. deceased, and then and there distrained all the Goods and Chattels which were the said R. B.'s in the said Messuage, and which are mentioned in the Schedule hereunto annexed, for 56*l.* due to the said C. B. for Rent of the said Mes-

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Messuage for one Year and three Quarters of a Year, ending at the Feast of St. Michael the Archangel last past: And after such Distress, (that is to say) on the 25th Day of, &c. Instant, did cause the said Goods and Chattels (being then unreplevied) to be appraised by L. A. and E. H. both of the Parish of, &c. who were first sworn by the Constable of the said Parish of, &c. duly to appraise the same: and which said Goods and Chattels the said Appraisers did, upon their Oaths aforesaid, appraise and value at 46 l. 4 s. 9 d. And whereas the said Goods and Chattels are as yet unreplevied, and the said Rent unpaid: Now this Indenture witnesseth, That the said J. D. for and in Consideration of the Sum of 46 l. 4 s. 9 d. being the best Price that could be gotten for the said Goods and Chattels to him in Hand paid by the said T. C. hath bargained and sold, and by these Presents doth bargain and sell unto the said T. C. all the Goods and Chattels in the said Schedule hereunto annexed mentioned, to hold the same unto the said T. C. as his own proper Goods and Chattels for ever. In Witness, &c.

The Form of an Oath to be administered to the Appraisers.

YOU shall swear, That you and each of you shall well and truly appraise, to the best of your Knowledge and Understanding, all and singular the Goods and Chattels now shewed to you, being Goods distrained for Arrears of Rent due to Mr. ——— for the House or Tenement wherein they now stand or be, and have not been replevied within the Time limited by the late Act of Parliament. So help you GOD.

By

By Stat. 8 Ann. If a Lessee fraudulently convey away Goods, &c. the Lessor or Landlord with a Constable, &c. may in five Days seize such Goods wheresoever found, as a Distress for Rent in Arrear (the Goods not being sold for a valuable Consideration before the Seizure) and sell the same, &c. Distress may be likewise taken for Rent in Arrear, where Leases are expired; provided it be made in six Months, and the Tenant be in Possession, &c.

CHAP. LVIII.

The Office and Duty of a Constable, relating to the King's Game, Fishery, Excise, and Customs.

UPON a Warrant directed to a Constable, Headborough, &c. under the Hands and Seals of two or more Justices of the Peace, the Constable, &c. may search suspected Houses for Setting-Dogs, Nets, and other Tackle for taking Pheasants, Partridges, and other Game, and destroy them so found; but if the Owners have free Warren, or are Lords of the Manor, or are Freeholders of 40 l. per Ann. or more, of Estate of Inheritance, or 80 l. per Annum for Term of Life, or be worth in Goods 400 l. they are exempted from this Seizure.

As to the Constable's Office relating to Fishery, he may, by Warrant under the Hand and Seal of a Justice of Peace, apprehend such as destroy the Spawn or Fry of Fish along the Sea-shore, or in any Creek or Haven, or within five Miles of the Mouth of either of them, or such as fish with unlawful Nets to destroy the
young

young Fry, the Meshes of their Nets not being three Inches and a half between Knot and Knor, for which Default they are to pay 10 s. to be levied by Distress and Sale of Goods, the Overplus to be returned to the Owner, if any remain. 3 Jac. 1. cap. 12. *Wingate's Abridg. Tit. Fish, Fishers, Fishing.*

And for the Encouragement of the *English* Fishery, if any Herrings, Ling, Cod or Pilchards, fresh or salt, dry or bloated, or any Eels or Congers, or Salmon, be brought in and uttered to Sale by Foreigners, it may be lawful for the Constable, Headborough, &c. or any other Person to seize them, the one Half to the Poor of the Parish, and the other Half to the Use of him that seizes; and if any one shall refuse to assist a Constable or other Officer hereto impowered on this Occasion, being commanded so to assist him in the King's Name, he upon Complaint and Proof of such Contempt, lies liable to be imprisoned and fined at the Discretion of the Justice before whom he shall be convicted. 18 Car. 2. cap. 2.

As to the Duty of a Constable relating to the *Excise*: Note, That he is to be aiding and assisting, when required, to the Gaugers and Under-Officers employed therein, and to go with them in the Night-time to such Houses where any Liquors are to be gauged. They are moreover to levy Forfeitures where a Conviction is made before the Justices or Commissioners, of any Concealment, Fraud, or the like, by Warrant for that Purpose, directed to them to make Distress and Sale of the Offender's Goods, and to render the Overplus, if any be, to the Owner, and for Want of such Distress, to carry the Party so offending, upon Commitment to Gaol, there

there to remain till there be Satisfaction made, and upon Warrant directed to a Constable from the Commissioners, he is to summon all Alehouse-keepers within his Division, at such Days and Places as shall be appointed in the said Warrant from Time to Time, &c.

As to what concerns the Constable's Office relating to *Customs*, by the Act made the 14 Car. 2. such as have Authority by Writ of Assistance under the Seal of the Court of Exchequer, may take to their Assistance the Constable, Headborough, or other Peace-Officer inhabiting near the Place, and in the Day-time enter the House, Shop, Cellar, Warehouse, Rooms, or other Place; and in case of Refusal or Resistance, break open Doors, Packs, Chests, Trunks, or such Places, and take away such uncustomed and prohibited Goods as they shall there find, and convey them to the King's Storehouse, in such Port as is next to the Place where the Merchandize shall be seized. See further, 13 Car. 2. cap. 11. And if the Officers of the Customs, or any acting, being assisting or aiding to them, shall be sued, indicted, prosecuted or molested, such Person or Persons, his or their Heirs, Executors and Administrators, may plead the general Issue, and give any of the Acts relating to the Customs in Evidence in any of the Courts of Justice. 14 Car. 2. cap. 11.

C H A P. LIX.

Constables Office in respect to the Game, Deer, &c.

CONSTABLES, by a Justice of Peace his Warrant may enter and search Houses of suspected Persons; and if any Venison, Deer-skins or Toyls be found, may carry the Person before the Justice; and if he do not give Account how he came by them, or in convenient Time do not produce the Party of whom he had them, or prove the Sale upon Oath, he shall be convicted, and forfeit 30*l.* 3*ſ.* 4*d.* *W. & M. c. 10.*

Deer-stealers forfeit 20*l.* being convicted before one Justice, either by Confession or Oath of one Witness, of hunting, taking, killing or wounding of any red or fallow Deer, in any Place inclosed for keeping Deer; the Constable is to levy the Penalty (by Warrant from a Justice) by Distress; and if no Distress can be found, the Party offending must suffer a Year's Imprisonment, and stand in the Pillory one Hour on a Market-Day, in a Town next to the Place where the Offence was committed. *Stat. 3 & 4 W. & M.*

By 5 *Geo.* If any Person shall enter into any Park, &c. and wound or kill any Deer without the Consent of the Owner, and thereof shall be indicted before any Judge of Gaol-Delivery, and be convicted, he shall be sent to the Plantations for 7 Years. Keepers of Forests, Parks, &c. killing Deer without the Owners Consent shall forfeit 50*l.* for each Deer, to be levied by Distress; and for want of Distress shall be imprisoned 3 Years, and set on the Pillory. Pillory

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Pulling down Pales, or Walls of Parks, is subject to the Penalty 3 £ 4 *W. & M.* for killing of Deer, viz. 30 *l.* And Persons convicted of Deer-stealing, are to enter into a Bond of 50 *l.* to the Person injured for future good Behaviour, before their Discharge.

CHAP. LX.

Several Things worthy of Observation, concerning the Destroyers of the Game.

BY Stat. 23 *Eliz.* Killing or taking Partridges or Pheasants in the Night-time with Nets, &c. forfeits for every Partridge 10 *s.* and for every Pheasant 20 *s.* which if not paid in ten Days after Conviction, the Offender must be committed without Bail for one Month, and must enter into a Recognizance before one Justice, with two Sureties to appear at the next Sessions, and give Bond not to offend in the like Nature for two Years.

By Stat. 1 *Jac. c.* 27. Shooting at Partridges or Pheasants, or taking, killing or destroying them with Setting-Dogs or Nets, or other Instruments, the Offender shall be committed without Bail for three Months for every Offence, unless he pay immediately upon his Conviction to the Churchwardens of the Parish, for every Pheasant 20 *s.* for the Poor, and for every Partridge 10 *s.* but by 7 *Jac. c.* 11. it is 20 *s.* for every Partridge, if taken between the first of July and last of August.

Selling, or buying to sell, Partridges or Pheasants, forfeits for every Partridge 10 *s.* and Pheasant 20 *s.*

Offender convicted by his own Confession, or by Oath of two Witnesses before two Justices of the Peace, of killing an Hare, forfeits to the Use of the Poor 20 s. where the Offence was committed, or else be committed to Prison without Bail for 3 Months; but after he hath been in Prison a Month he may be discharged, if he will be bound with two Sureties, before two Justices, never to offend in that Kind any more.
1 Jac. c. 27.

By Stat. 5 Ann, If any Person shall keep any Dogs or Engines to kill Game, not being qualified, he shall forfeit 5 l. Persons not qualified to kill Game, Higlers, Chapmen, &c. having in their Custody, or buying or selling any Hare, Pheasant, Partridge, Heath Game, &c. shall forfeit 5 l. for every Hare, &c. or be imprison'd 3 Months.

Persons qualified to keep Guns, &c. are such as are Lords of Manors, such as have 100 l. per ann. of Inheritance, &c.

C H A P. LXI.

Of Fishing. Of Doves and Pigeons.

TO take any Fish in any several Water or River, without the Consent of the Owner of the said Water; Penalty upon Conviction, by Confession of the Party, or Oath of one Witness, (within a Month) before a Justice of Peace, Recompence as the Justice shall appoint, not exceeding treble Damages, and pay to the Poor not exceeding 10 s. to be levied by Distress; and for Want of Distress, to be committed to the House

House of Correction, not exceeding a Month.
22 & 23 Car. 2. c. 25.

The Justice may take or destroy the Engines wherewith he was taken and apprehended. *Ibid.*

Persons aggrieved may appeal to the Quarter Sessions- *Ibid.*

None shall keep any Net, Angle, or other Engine for taking Fish (other than Makers and Sellers thereof, and Owners of a River or Fishery) And Owners and Occupiers of Rivers and Fisheries, and such as they shall authorize, may seize and keep to their own Use any such Engine of such as shall be found fishing, without the Consent of the Owner or Occupier of such River or Fishery. 4 & 5 W. & M. c. 23.

This Act shall not abridge Fishermen and their Servants lawfully authorized, to fish in navigable Rivers with lawful Nets. *Ibid.*

On a Trial at Bar, it was the Opinion of Lord Chief Justice Hale; in case of a private River, the Lord having the Soil, is good Evidence to prove that he hath the Right of Fishing, and it puts the Proof upon them that claim *Liberam Piscariam*; but in case of a River that flows and reflows, and is an Arm of the Sea, there, *prima facie*, it is common to all: And if any will appropriate a Privilege to himself, the Proof lies on his Side.

For in case of Trespas brought for fishing there, it is, *prima facie*, a good Justification to say, That the *Locus in quo est brachium Maris in quo unusquisque subditus Dom. Reg. habet & habere debet Liberam Piscariam.*

The Soil of the River *Thames* is in the King, and the Lord Mayor of *London* is the Conservator of the River, and it's common to all Fishermen.
1 Mod. 105.

Indictment for taking out of his Pond, *quosdam Pisces vocat Carps de Bonis & Catallis* J. S. Exception was taken to this Indictment, because he doth not say how many Fishes he took, and cited, 5 Rep. *Playter's Case*. *Kelynge* and *Windham* over-ruled the Exception. In Actions, Damages are to be recovered, not in Indictments; but the Party is to be fined at the Discretion of the Court, be it one Fish or more, according to the Number of the Fishes. *Twysden contra*. Indictments ought to be as certain as Actions; but the other two Justices over-ruled the Party to plead to the Indictment. 1 *Lew.* 203. The King against *Metwamy*.

An Ejectment lieth not of a Pischary, which is but a Liberty, but it must be by the Number of Acres. 1 *Cro.* 491.

A Warrant against one for keeping Nets, not being qualified, to search for them.

Suff. ss. Whereas Complaint hath been made to me, That the Fish in, &c. have lately been destroy'd by some idle and disorderly Persons, not qualified by Law, either as having a free Fishery, or being Owners thereof, or otherwise lawfully authorized to fish in navigable Rivers; and that several Nets, Leaps, and other Instruments and Engines, are kept in the Parish of, &c. for the Destruction of Fish by Persons who are not Makers or Sellers thereof, contrary to the Statute in that made made and provided. These are therefore to require you forthwith to enter into and search the Houses, Out-houses, and other suspected Places within your Parish, or of such who you have been informed have any Nets, or other Instruments for Destruction of Fish, and
to

to seize the same where you shall find any such; and likewise to bring the Person, in whose House they shall be found, before me, or some other Justice of the Peace of this County, to answer the Premises: And hereof fail not, &c.

Information on the Stat. 2 H. 6. 15. on a Trial at Bar, the Case was upon the Words of the Statute, which are, That every Person that setteth or fasteneth in the River of *Thames* any Nets or Engines called *Trincks*, or any manner of Nets to any Posts, Boats, Anchors, or the like Thing, to stand continually Day and Night, forfeits 5 *l.* for every Time to the King: And the Defendants fastened Nets to Boats Day and Night, so long as the Tide did serve, and not [continually] *Per Cur.* It is within the Statute, for [continually] shall be taken continually so long as they may stand to take Fish, and as the Time of Fastening endures. 12 Rep. 49.

In Trespass for breaking his Net, and on not guilty, Evidence was for a Pilchary. Full Costs were prayed on the Stat. 23 Car. 2. c. 9. but the Issue being not guilty, and no Title in the Declaration, nor certified by the Judge of Assize that the Title was in Question, the Court would give no more Costs than Damages. 3 Keb. 121. Earl of *Pembroke* and *Westhall's* Case.

By Stat. 2 & 3 Ann. c. 20. it is enacted, That if any Officer or Soldier, without Leave of the Lord of the Manor under his Hand and Seal, take or destroy any Hare, Cony, Pheasant, Partridge, Pigeon, or any other Sort of Fowl, Poultry or Fish, he shall, upon Conviction, upon Oath before a Justice of Peace, forfeit, if an Officer, 5 *l.* and for every such Offence committed by any Soldier under Command, the Of

ficer commanding in chief shall pay 20 s. or lose his Commission.

None may newly erect a Dove-coat but the Lord of the Manor; and if any other do it, he may be punished in the Leet: But no Action on the Case lies for any particular Man for the Infiniteness of the Actions that may be brought. *5 Rep. Boulston's Case.* But this Case is denied for Law; as in the *Earl of Northumberland's Case*, *Pop. 141*, the Question was, Whether the new erecting of a Dove-coat by a Freeholder were a common Nuisance, and punishable in the Leet? *Et per tot. Curiam*, upon great Deliberation, it is not a common Nuisance, punishable or enquirable in a Leet; for a Man hath *jus Proprietatis*, and Privileges in Doves; Property in respect of the Place; Trespass lies, *Quare columbare fregit & columbas cepit*, there is no Remedy for the killing them.

It is lawful for any Man to kill Doves on his own Land, but they must beware they do it not against any Statute.

By Stat. 7 Jac. 1. Any Persons killing or taking Pigeons, shall be committed by Two Justices for 3 Months without Bail, unless he pay immediately to the Use of the Poor where the Offence was committed, or the Offender apprehended, 20 s. for every Pigeon so killed or destroyed; if he doth not pay the Penalty, but is committed, then he may, after Commitment for a Month, be discharged, if he will be bound before two Justices with Two Sureties in 20 l. with Condition never to offend in the like Nature.

CHAP. LXII.

Cony-Warren.

Lease of a Warren reserving Conies is good. In *Hinsly* and *Wilkinson's Case*, *Gro. Car.* 387. the Plaintiff was a Copyholder in the Manor of *A.* whereof a great Waste, called *L. Waste*, was Parcel; and the Copyholders of the Manor having Copyhold there, the Defendant being seiz'd of a Parcel of Wood, called *L. Wood*, adjoining to the same Common, maintained Conies in the said Wood, which ran out and eat the Common; no Action on the Case lies, for none can say, when Conies are in the Common, whose Conies they be; and they cannot be said to be the Defendant's Conies rather than any others, for being out of his Soil, he hath no more Interest in them than any other, they being *Feræ Nature* and is no more an Action than when one suffers his Doves to fly into the Corn adjoining; and the Commoner need not be at any Mischief, for he may kill them if he can.

But in 2 *Leon.* 201. Trespass for killing 18 Conies: Defendant saith, The Place where is an Heath, in which is Common of Pasture, and and that he found and killed them. Against a Stranger the Plaintiff may have his Action for killing his Conies; and if against a Commoner, in *Hodesdon* and *Grisel's Case*, 1 *Rel. Abr.* 405. Vide *Hinsly's Case*, *supra contra*, *Hodesdon* and *Grisel's* is well reported by *Yelverton* 104. Justification in Trespass, that he had Common in the Close called *B.* and that he had five Cows put there, *ad vendum* the Common; and because *quamp plurimi*

Cuniculi were there feeding and spoiling of his Common, he, in Preservation of his Common, entered *ad fugand' & occidend'* the Conies: On Demurrer, the Justification adjudged ill; for a Commoner may not enter to chase or kill Conies, for tho' the Owner of the Soil had not Property in the Conies, yet so long as they are in his Land he hath Possession, which is good against a Commoner; for if the Lord surcharge with Beasts, the Commoner may not chase them, but have his Action on the Case; but the Beasts of a Stranger the Commoner may distrain Damage Fesant, or chase them out of the Common. Also Conies are Matter of Profit to the Owner of the Soil for House-keeping; so adjudged on great Debate by all the Judges of the King's Bench, they being on the first Day of the Argument of a contrary Opinion. But yet *Quare*, because of *Hinsly's Case supra*.

By the Statute 9 *Anne*, no Lord nor Lady of a Manor shall appoint above one Person to be a Game keeper in any one Manor, with Power to kill Game, and the Name of such Person shall be entered with the Clerk of the Peace of the County; a Certificate whereof to be granted by the Clerk of the Peace on Payment of 1 s. and if any other Game keeper, whose Name shall not be so entered, shall presume to kill any Hare, Pheasant, &c. or if any Game keeper, or other Person, not qualified in his own Right to kill Game, shall expose to Sale such Game, shall forfeit as in the Act made 5 *Anna*.

Any Hare, Pheasant, &c. found in the Shop, House or Possession of any Person not qualified to kill Game, &c. shall be deemed an exposing thereof to Sale.

C H A P. LXIII.

Rates for the Relief of poor maimed Soldiers, Mariners, Prisoners, &c. How to be gathered and ordered, &c.

WHere Money is rated for Relief of the poor maimed Soldiers, Mariners, Prisoners, &c. The Constable within his Constabulary, upon Refusal or Neglect of Payment, may, as also the Church-wardens, levy it by Distress and Sale of Goods, rendering the Overplus to the Owner, if any there be. 43 Eliz. cap. 3. *Wingate's Stat. Tit. Captain and Soldiers, &c.*

All Money in this manner, and to the Use aforesaid collected, must be Quarterly delivered to the High Constable 10 Days before the Quarter Sessions, or in Default, the Constables, Church-wardens, their Executors or Administrators, are to pay 20 s. by way of Forfeiture; and the High Constable so receiving, is to pay it to the Treasurers appointed by the Justices to receive it, or upon Default he forfeits 40 s. the Forfeitures to be levied and employed by the Treasurer for increasing the Stock for the aforesaid Uses. 43 Eliz. cap. 3. &c.

The High Constables are under the Penalty of Five Pounds, to pay such Money Quarterly at every Sessions, to such Treasurers or Collectors, as is raised in their respective Parishes, and paid to them by the Constables and Church-wardens for the Relief of poor Prisoners. 14 Eliz. cap. 5. &c. And they may make Distress, as in case of Maimed Soldiers aforesaid, upon Refusal or Neglect of Payment, for Money so rated for the

the Relief of poor Prisoners in the *Marshalsea* or *King's Bench*; as likewise for the Relief of the Poor in Alms-Houses and Hospitals; and for want of Distress, the Party may, by the Justices of the County, be committed to Prison, there without Bail or Mainprize to abide till the Sum be paid: And the Constable or Church-warden neglecting to pay it in Ten Days before the Quarter-Sessions, as aforesaid, forfeits 10 *s.* each, and the High Constable 20 *s.* if he pay it not in at the Quarter-Sessions, as directed; which Forfeitures the Treasurer may levy by Distress and Sale of Goods, and employ to the Increase of the Stock. 43 *Eliz. cap. 2. &c.*

CHAP. LXIV.

The Duty of Constables, as to Quartering of Soldiers, &c.

Constables and Tithingmen, and chief Officers of Towns and Villages, are to quarter and billet Officers and Soldiers on Persons keeping Inns, Livery-stables, Ale-houses, Victualling-houses, and Houses selling Brandy, Strong-water, Cyder, &c. by Retail, to be drunk in their Houses, and on no private Persons. If any Military Officer shall take upon him to quarter Soldiers otherwise, or abuse the Constable, &c. he shall be cashier'd: And if any Officer shall quarter Wives, Children, &c. of Soldiers in any Houses, without the Consent of the Owners, he shall be cashier'd; and being a Civil Officer, he shall forfeit 20 *s.* Stat. 1 *Geo.*

And Persons aggrieved, by having a greater Number of Soldiers quartered on them than they

they ought. by Constables or others, may be relieved, on making Complaint to one or more Justices.

Constables, having Warrants for that Purpose from Justices of the Peace, are to make a Provision of Carriages for Soldiers, under a Penalty not exceeding 40 s. nor under 10 s. to be levied by Distress, &c. The Officers are to demand the Carriages of such Constables, &c. and pay down in Hand 1 s. for every Mile for every Waggon, and 9 d. per Mile for Carts. Stat. *ibid.*

Constables, Tithing-men, &c. are to apprehend Deserters, (for which a Reward of 20 s. is ordered out of the Land-Tax Money) and carry them before a Justice; who is to commit them to the common Gaol, and transmit an Account thereof to the Secretary at War. And Harbouring Deserters, or buying their Cloths, is liable to a Penalty of 5 l.

In the last War, Constables, by Warrant from three Justices, had Power to press able-bodied Men, having no lawful Employments or Means for Living, to serve in the Wars; for which a Reward of 10 s. each Man was given to the Constable. Stat. 2 & 3 Ann. &c.

C H A P. LXV.

What particular Things and Matters High Constables ought to return and present before the Justices in Sessions, and to be returned to them by the Petty Constables in their respective Jurisdictions.

1. **T**HEY are required to return the Christian and Surnames, Additional Names, and Qualities of all Popish Recusants, as well Lodgers as Housholders, residing or dwelling in any of their respective Parishes or Divisions.

2. The Names of such as shall prophanely curse and swear, with the Number of their Oaths, immediately, or within 10 Days, informing the Justice of the Peace of such Offence.

3. The Names of such Persons as shall drink or tipple in any Inns, Alehouses or Taverns, at any Time, especially on the Lord's Day, and such Persons as they shall find drunk, with the Names of those that shall entertain them.

4. Such Persons Names as suffer any unlawful Games to be used in their Houses, Gardens or Backside, with the Names of such as haunt Gaming.

5. They are to return all such Alehouse-keeper or Victuallers, as sell Ale or Beer without Licence.

6. Such Persons as are to watch and ward, who neglect or refuse to do their Duty therein.

7. The Names of such Persons as divide their Houses into Tenements, and take in Lodgers or Inmates that annoy their Neighbours, or are likely to be a Charge to the Parish.

8. The

8. The High Constable is to return the Defaults of Petty Constables, Tything men, &c. for neglecting to apprehend and punish Beggars, Rogues, Vagabonds, or refusing to pass them, &c.

9. They are to certify the Names of such Persons as refuse to take Apprentice poor Parish Children, according to the Statute.

10. All ungovernable Men and Women, living at their own Hands; such as are idle, refusing to Labour, and can give no satisfactory Account how they get their Living; and all suspicious Persons, as Mothers of Bastards, Whores, Noctivagrants, Night-walkers, or such as are likely to be chargeable to the Parish wherein they reside.

11. The Names of such as neglect or wilfully omit, to make due Rates and Collections for the Relief of the Poor of the Parish, or that cannot, or do not, give just Account how the Rent and Stock of the Poor is employed.

12. They ought to return all Defects in the Highways and Bridges; also Pavements in their Districts where there are no Commissioners, or Defaults are neglected by them, with the Names of such as ought to repair them, and have neglected or refused so to do.

13. They ought to present all such Scavengers as are negligent in cleansing the Streets, or in other Parts of their Duty; and all common Annoyances in the Streets, Lanes or Alleys.

4. The Name or Names of every such Person or Persons who keep Swine, to the common Annoyance of their Neighbours, or any other in and about the Liberty and Precincts, where Hogs ought not to be kept; more particularly referring

ring to the Cities of *London, Westminster,* and their Liberties.

15. They ought to present Bakers putting Bread, not due Weight, to Sale, with a particular Account thereof. Also Brewers, selling Beer or Ale to unlicensed Alehouses or Victualling-houses ; likewise all Regrators, Forestallers of Markets, Ingrossers of any Corn or Grain, Butter or Cheese, Bacon, or any kind of dead Flesh, or Provisions whatsoever.

And, in order to make out these Matters against the Delinquents, they are to return the Names of such Persons as can testify or prove the Offences before the Justices in their Sessions and Meetings ; and thereupon they are to be summoned, in order to be examined, that it may be known how far they can inform them in the Particulars alledged.

CHAP. LXVI.

Of Watchmen, and their Duty ; and also of Constables in the Night-time.

THE Constables, &c. of every Town, are to cause Night-watches to be kept from *Ascension-Day* till *Michaelmas* yearly, from Sun-set to Sun-rising ; and if such as ought to watch, refuse, upon Command of the Constable, they may be bound over to answer at the Quarter Sessions, by a Justice ; or the Constable may present them at the next Sessions. And some are of Opinion he may set the Party in the Stocks ; but this seems rather to be when he appears, and will not be orderly. *Dalt.* 141.

Watch-

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Watchmen are to apprehend all Rogues and Vagabonds, Night-walkers, Eves-droppers, Scouts, such as go armed, &c. And if any Stranger pass by them, he may be arrested, and detained till the Morning; when he is to be discharged, if they have no reason to suspect him; but if he be a suspicious Person, they shall deliver him to be safely kept, &c. And if any will not obey the Arrest, the Watchmen shall levy Hue and Cry upon him, &c. Stat. *Winch.* 13. Ed. 1. c. 4.

But tho' Strangers may be arrested till the Morning, Watchmen usually examine them, or carry them before the Constable for that Purpose; and if there appear no Cause of Suspicion, they suffer them to pass; but if they do find Cause of Suspicion, then they keep them till the Morning. All Strangers, Horse-men, or Foot-men, Drivers of Cattle, and others, that carry any Burdens on Horseback, &c. the Watch may detain till the Morning, unless they can render a good Account of themselves, and their Carriage: And if any Post come by, 'tis good to enquire of the Number of the Persons, lest Offenders thereby escape. *Dalt.* 140.

The Constables, &c are to be assisting to Watchmen on all Occasions. And the Constables in *London* may send such Persons as are taken upon the Watch late at Night, and appear unruly or suspicious, to the Prison called the *Compter*.

The Duty and Office of Churchwardens, Questmen, Sidesmen, &c. in all Respects relating to what concerns them in the Discharge of their Trusts

CHAP. LXVII.

Of the Office of a Churchwarden, &c. Its Antiquity and Dignity. How to be chosen. What they are to do in keeping the Lord's-Day, and what relates to them as to Goods of the Church, and well ordering of Matters, &c.

THE Office of a Churchwarden appears to be much ancients than in Name, though the latter is of a considerable Antiquity, the Office it self being as ancient as the Tolerating Christian Churches in the due Exercise of Religion by the Civil Power, but often interrupted and laid aside by the Persecutions and Turns of Government; however, the Office is exceeding necessary and beneficial to the Churches and Inhabitants of the respective Parishes; for they are in the Manner of a Corporation as they are taken at Common Law, (properly termed Churchwardens at the Common Law) because by that Name they are enabled to take the Chattels and moveable Goods, and to implead or be impleaded, sue or be sued, relating to such Goods and Chattels as belong, or are to the Use of the Parish of which they are such Officers; and the Preservation of the Goods of the Church are more immediately and particularly under their Care;

as the Communion Plate, Books, and other Ornaments and Furniture, their Care being not to suffer any Thing to be wasted or diminished they find at the Time of their entring on their said Offices; at which Time they ought to be put in their Custody and Charge, to take Notice of.

As for the Choice or Electing these Officers, it is to be annually in *Easter*, unless the Custom in a Parish alter the Time; and in the Book of the *Constitutions of Canons Ecclesiastical*, in the First Year of the Reign of King *James I.* the Churchwardens, Quest-men, Sides-men or Assistants, in the respective Parishes, are to be chosen or elected by joint Consent of the Ministers and Parishioners, if so it may be; but upon Disagreement, the Minister is to choose one, and the Parishioners the other; and without such a joint or several Election, no Person ought to take upon him the Office of a Churchwarden, nor when chose, to continue any longer than the Space of one whole Year in the said Office, unless in the same manner again chosen. However, there are several Cases that have set aside this Canon, where the Custom in any Parish has been contrary to it, for in such Cases the Custom has been allowed and observed before the Canon: And the Churchwardens, &c. being chosen, are to be diligent in observing, that the Parishioners make due Resort to the Parish Church on the Lord's Day, and upon Holy-days, and there to continue devoutly and reverently during the Time of Divine Service; and such as neglect without lawful Excuse, or urgent Occasion for Absence, after Admonition, if they further neglect, their Names must be presented by the Churchwardens to the Ordinary of the Place. See Canon 89, 90. 5 *Edw. 6. cap. 1.*

They

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They are strictly to see the Lord's Day kept in and out of the Church, and visit Inns, Taverns and Alehouses; and if in the Time of Divine Service they find any Persons tippling there, they may carry them before a Justice of the Peace, who may cause them to pay 3 s. 4 d. for tippling, over and above the 12 d. due for being absent from the Church; and he that keeps the House, for so suffering them to tipple, forfeits 10 s. and these Sums to go to the Use of the Poor of the Parish. 4 Jac. cap. 5.

The Minister and Churchwardens are not to suffer any Person to preach within the Church nor Chapel, not producing a Licence to authorize him so legally to preach, and such a one as shall to them appear sufficient. *Can.* 50, 85. No Sports are to be suffered in the Church, Chapel, Church or Chapel-yard, on a Sunday or other Days, or any Thing unseasonable, or tending to the prophaning those Places; nor the Bells to be rung for Sport or Pastime, but to be rung only upon suitable and solemn Occasions.

The Churchwardens, as I hinted, being in the Nature of a Corporation, have Power to take Gifts for the purchasing Furniture to the Church, or for other Advantages to the Behoof of the Parish; but they may not take an Estate of Land by the Name of Churchwardens only; for if there be a Feoffment made to the Churchwardens of the Parish, the Use is void in it self; for they are not in a Capacity to take such a Purchase, nor may they subscribe to have Lands to themselves or their Successors; for as to Lands they are no Corporation, but to Goods only.

If a Bell be broke or any ways spoiled, so that it is not tunable, the Churchwardens, by the Agreement of the Parishioners, or the greater Part of them, may cause it to be new-cast, leaving it,

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it in the Founder's Hands till he is paid, and by that Means the Churchwardens may bar their Successors of that Account.

If any indifferent Person, or other in Place, buy a Bell, set up a Pew, or any Ornament to the Church, it cannot be taken away by him or his Heirs, &c. because it is a Dedication, and the Churchwardens may sue those that attempt it; but the Action must be commenced for Goods for the Use of the Parish, and not in the Churchwardens own Name; nor can any Churchwardens sell, impair, or release any of the Goods of the Church, without the free Consent of the Sides-men or Vestry, under Pain of being brought to Account for it by the succeeding Churchwardens, and forced to make sufficient Satisfaction.

If the Church-Windows or Walls be broke, the Trees cut down in the Churchyard, or the Grass eaten up there, this lies in the Parson's Care to redress, and not the Churchwardens, for he is Conservator of the Body of the Church and Churchyard, as the Churchwardens are of the moveable Goods only.

C H A P. LXVIII.

The Churchwardens Choice of other Officers; giving up their Accompts, making Dismissals. Of Forfeitures, Presentments; and where, and where not they may give them in; with other Things.

THE Business of the Churchwardens is to be conjunct with the Constables in choosing the Surveyors for the Highways, and appointing proper Days for their Work; also in the Oversight

sight of the High Constable, to account for Monies levied by Way of Forfeitures relating to the Highways; and with the Assistance of two Justices of the Peace, one to be of the *Quorum*, oblige the High Constable to account for, and pay the Money so coming to his Hands; and to execute the Justices Warrants for Forfeitures and Penalties for not cleansing the Streets, or repairing the Highways. 14 Car. 2. cap. 2.

The Churchwardens taking to them the Assistance of the Overseers of the Poor, have Power to execute the Warrants directed in the Woollen Burying Act, and levy the 5 l. Penalty by Distress and Sale of Goods for Non payment, to be employed to the Poor of the Parish where such Offence is committed. 18 Car. 2. cap. 4.

In London, Westminster, the Borough of Southwark, &c. The Churchwardens, together with the Constables, Overseers of the Poor, and Surveyors of the Highways in every Parish respectively, or the greater Number of them, are on Monday or Tuesday in Easter Week yearly, upon giving publick Notice, to call together such other Inhabitants as have born the like Offices, to nominate and make Choice of two fit Persons, being Tradesmen of their Parish, to be Scavenges for the Lanes and Streets, and other open Passages of each Ward or Division within the said Parish, to continue for the Space of a Year, or till others are chosen and settled in their Place. 2 W. & M.

At the End of the Year, or within one Month after at farthest, the Churchwardens are to give up the Account of their Receipts and Disbursements before the Minister and Parishioners, and upon quitting their Offices, to deliver up to the Parishioners such Money and Things as are remaining in their Hands, that it may by them
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be delivered over to the succeeding Churchwardens by Bill indented. *Canon 89.*

Upon Refusal of this, they may at the next Visitation-Court be presented for it, or an Action of Account may be brought against them at Common Law by the succeeding Churchwardens to compel them to it; but their necessary Expences and Disbursements on the Account and Business of the Parish, upon making up their Accounts, shall be allowed them.

As for Presentments, they are not obliged to make them above once in the Year, where by Custom it has been no oftner a Use, nor in any Diocese whatever above twice a Year, unless it be at the Bishop's Visitation; and for such Presentments of every Parish-Church or Chapel, the Register of the Court where they are exhibited is to receive no more than 4 s. a Year for his so registering them; but the Churchwardens of their own Accord may oftner make their Presentments. *Canon 116.*

One of the Times of Presentments is ever to be about a Fortnight after *Easter*, and at that Time they are to resign their Office to the succeeding Churchwardens, and the new ones cannot be sworn before the old ones have given in their Presentments; and every Parson, Vicar, or, in their Absence, their Curates, in the said Presentments, are to join with the Churchwardens, &c. and upon the Refusal of the Churchwardens to make Presentments, the Parson, Vicar, or their Curates in their Absence, may make their Presentments to their Ordinaries at all such Times, and when else they shall think fit. *Canon 113, 118.*

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It is provided, that no Churchwardens, Side-men, or Quest-men, shall be cited or called, but only at the Times limited to appear in the Ecclesiastical Court, or before any Ecclesiastical Judge whatsoever, for refusing to present any Faults committed in their Parishes at other Times, and by the Ecclesiastical Law punishable; nor be further troubled after their Presentments delivered at the usual Time, unless it manifestly appear they have wilfully neglected, and wittingly omitted for Favour, Affection, or otherwise, to present some one or more notorious Crime or Crimes; or upon just Cause arising, to call them in order to explain their former Presentments; and the Ordinary, in case of such wilful Omission, may proceed against them, as in the Ecclesiastical Courts, in case of wilful Perjury, the Law has provided. *Can. 117.*

CHAP. LXIX.

The Grounds of Presentments, or usual Articles given whereon to found their Presentments, that the Churchwardens may know what to do in this Case; Rates for repairing Churches, &c.

1. **W**Hether the Church, Chancel, Bells, and Ropes, be in good Repair: The Lord's Prayer, Ten Commandments, and Creed, be drawn in fair Letters: What Assessments are made for the Repair of the Church, and the Names of such as make Default in paying them: Whether there be a Communion-Table, Carpet and Font in the Church, and all other necessary and useful Ornaments in the Church and Church.

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Churchyard: Whether the Parsonage-house, and Out-houses, are in good Repair.

2. Whether the Parson, Vicar or Curate, read the Common-Prayer at Morning and Evening Service with his Surplice, or preach every Lord's Day, read Homilies, catechize, preach sound Doctrine, and use no seditious Expressions against the Government: Whether he celebrate the Lord's-Supper at least three Times every Year, one to be at *Easter*: Whether he baptize Infants with Godfathers and Godmothers, bury the Dead according to the Form prescribed in the Book of Common-Prayer, preach in his Gown, visit the Sick, and pray with them: Whether he marry clandestinely: That he be a sober Man, live chastly, and be a Peace-Maker in his Parish: Whether once every Year at least be read the Canon to the Parishioners, and twice every Year the 39 Articles.

3. Whether the Parishioners at due Age resort to the Parish-Church to hear Divine Service, and there reverently and decently behave themselves: Whether any work or sell Wares on the Lord's-Day, &c. Whether Vintners, Inn-keepers, or Alehouse keepers, keep Tippling in their Houses on the Lord's-Day.

4. Whether any be married within the prohibited Degrees, or be Adulterers, Fornicators, Swearers, Drunkards, Blasphemers, Sorcerers, &c. Whether all the Parishioners above 16 Years receive the Communion, at least thrice in the Year, *Easter* to be one Time: Whether any unseasonably keep their Children from being baptized, or Women decline the usual Time of being churched after their Delivery: Whether any bring not their Dead to be decently buried after the Service of the Church: Whether any

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have been married without the Publishment of Banns, or Licence, or at unlawful Hours : Whether their Hospitals, Almshouses, Schools, or Spittles, if any belong to them, be well used, or any Thing detained from them : What Legacies are given to pious Uses ; and if the Parishioners are orderly placed in their Seats without Contention.

5. Whether the Parish-Clerk or Sexton be duly chosen, can write, read, make the Responses, and be an honest Man. If the School-master, Usher, Physician, Chirurgeon, or Midwife, if any be in the Parish, teach or practise without Licence : Whether the Churchwardens be duly chosen in the Week after *Easter*, by the Minister and Parishioners, according to the Canon or Custom : Whether the old Churchwardens have been careful to keep the Church in Repair, to keep and carefully secure all Furniture belonging to the Church, &c. And whether, in the middle of Divine Service, they walk out of the Church to visit Taverns, Inns, Alehouses, &c. where Tippling may be used, and to see who are loitering or exercising any Sports on the Lord's-Day.

These are the chief Things to be presented ; and as to the Repairs of the Church, Rates are to be made by the Churchwardens, with the Consent of the major Part of the Parishioners, upon every Occupier of Lands, Houses, &c. And if the Parishioners do not appear, having Notice ; Churchwardens alone may make a Rate, &c. 1 Vent. 308.

CHAP. LXX.

Several nice Matters laid down for the Instruction of Churchwardens in their Office and Duty. Of Seats in Churches, &c.

IF a Bell be broke, the Churchwardens may have an Action against him that so broke it, or caused it to be broken, and recover Damages to the Use of the Parish.

If any one take the Organs out of the Church, the Churchwardens may bring an Action of Trespass, for the Organs appertain to the Parishioners, and not to the Parson; so no Action will lie in the Parson's Name, nor can he sue the Party that took them in the Ecclesiastical Courts.

The Churchwardens have no Action at Common Law to recover a Legacy never in their Possession. But for any Goods and Ornaments of the Church, being once in their Possession or Custody; they may maintain an Appeal of Robbery against any one or more Persons that steals them, and an Action of Trespass against him that does, without Right. take them away, even against the Parson or Vicar so offending; and the Damages so to be recovered against such Offenders, shall be converted to the Use of the Parish. But if it so fall out, that those Churchwardens, from under whose Custody the Goods were taken, chance to die before they have brought any such Action, the succeeding Churchwardens have no Right by Law to bring an Action for the same Goods.

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If a Churchwarden presents that any Parishioner, certifying his Name, is a common Disturber, or Sower of Discord among the Neighbours, unless it be done in the Church or Churchyard, a Prohibition lies, if the Presentment be made in the Ecclesiastical Court; because it belongs to the Leet, and not the Churchwarden, if the Offence be committed elsewhere, that is to present it:

If a Suit be commenced by the Churchwardens, in the Court Ecclesiastical, for a Church-Way, claimed as a Right belonging to all the Parishioners by Prescription: Here a Prohibition lies, it is a Temporal Case, and not in the Jurisdiction of the Spiritual Court.

The Churchwardens, with the Consent of the Minister, have the Right of placing the Parishioners in the Seats of the Church, reserving to the Bishop a Power of correcting the same; and the Churchwardens may have the Authority themselves, by Custom, as in *London*. Particular Persons may also prescribe to have a Seat, as belonging to them by reason of their Estates, &c. they constantly repairing the same.

Churchwardens of every Parish within the weekly Bills of Mortality in *London*, are to fix Stop-blocks, or Fire-cocks, at proper Distances in Streets; and keep in Repair a large Engine, and Hand-Engine, or they are liable to a Forfeiture of 10*l*. And the Turn-Cock, whose Water shall first come into the Main-pipe, when the Plug shall be opened at any Fire, shall be paid 10*s*. And the first Person who brings a Parish-Engine 30*s*. the second 20*s*. and the third 10*s*. payable (as an Encouragement to suppress Fires) by Churchwardens; which Money is to be

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assessed as Money for the Poor. *Vide Stat. 6 Ann. c. 31.*

✱ And now for Brevity Sake I pass over some other Matters not very significant, belonging to this Office, directing the Churchwarden for his better Information in many Things that concern his Office, to peruse the Office and Duty of a Constable, where he is jointly impowered to act with him in many Particulars, not here so expressly set down; and in which he may see more copiously what in Criminal Matters he is to do.

The Duty and Office of the Overseers of the Poor.

C H A P. LXXI.

The Office of the Overseers of the Poor; how to be qualified and chosen, where they may act, and what Degrees of Poor they are to have Regard to, in order to relieve them.

THIS is an Office very commendable, and of great Trust, chiefly requiring Diligence, and a good Conscience in the Performance of it. It is of great Antiquity, and the Roman Senators gloried more in this than in all their honourable Trusts and Promotions; they were prouder to be styled Patrons of the Poor, than of any Dignity whatsoever; and well administered, it gains not only a good Name here,

but has God's Blessing along with it, to make those that well discharge their Duty eternally happy hereafter.

These Officers ought to be credible, honest, substantial Men. They are to be yearly chosen, and joined with the Churchwardens of the Parish in the Oversight, due Regard, and Care of the Poor: They are to be made Choice of by two or more of the Justices of the Peace, one to be of the *Quorum*, who are enjoined yearly at *Easter*, or within a Month after, under their Hands and Seals, to appoint 4, 3 or 2 substantial House-keepers, according as the Parish requires, to be joined with the Churchwardens, to oversee and look to the Poor in their Parish, according to the Statute of 43 *Eliz. c. 2.* 21 *Jac. 1. c. 28.*

In this Case, the major Part of the Officers, without the Remainder, may do any Thing belonging to their Office, with the Allowance and Consent of them, either in particular or general, with two Justices of the Peace, one to be of the *Quorum*; and when they are not hindered by just Occasion, the Excuse to be allowed by two Justices of the Peace, they are to meet on the Lord's-Day in the Church Monthly, after Evening-Prayer, to consult of such Matters relating to their Office, as may turn to their best Advantage: and upon Neglect, without such reasonable Excuse, are liable to forfeit 20 s. for every Default. 43 *Eliz. Wingate's Stat. Tit. Poor People.*

And if, according to the Statute of 43 *Eliz.* they be not regularly and duly appointed, then every Justice of Peace, or Head-Officer of that Division, forfeits 5 l. which may be levied by a Warrant of Sessions, and employed to the Use of the Poor where such Default is made.

Of the Poor, there are reckoned three Sorts or Degrees; And *First*, Those by Defect and Impotency, as the Aged and Decrepid. being past their Labour.

The Infant, Fatherless and Motherless, not capable of being set on Work.

Those naturally disabled, either in Wit or Members, as the Lunatick. Idiot, Lame, Blind, and the like, not being able or capable to work; and Persons being visited with grievous Sickness and Diseases, tho' casually, however, being for a Time thereby rendered impotent.

These in their Degrees are to be provided for, and the Overseers are to take Care they have necessary Relief, and such proportionable Allowances as shall appear convenient, according to the Measure and Continuance of their Necessities and Maladies.

Secondly, Such Poor by Casualty, such as are casually disabled or maimed in Body, as Labourers, Soldiers, Mariners, &c. maimed or so disabled in their proper and lawful Calling. Also the decayed Householder, by Casualty of Fire, Losses at Sea, Suretyship, Robbery, or Decay and Loss in Trade, &c. A poor Man or Woman overcharged or burthened with Children, and not able to keep them by their Labour: All these, and the like, having Strength and Ability of Body, but no Means whereby to sustain themselves or Children, are to be set to Work; but if the Profit thereby arising procure not a sufficient necessary Maintenance, so that they cannot live thereby, they are Objects of Charity, and to be relieved at the Charge of the Parish, in some reasonable Proportion and Measure, as their respective Wants and Necessities shall render them deserving in the just Opin-

nion of the Overseers, under whose Care they are.

Thirdly, Such as are Thriftless, who have wasted what they had by Prodigality and Riotousness, Playing, Drinking, Debauchery, and the like; or such as are dissolute Strumpets, Pilferers, idle Persons refusing to work; Vagabonds that will settle in no Place, nor be content with Service; and for these the House of Correction is appointed, where they are to be sent; and if of able Bodies, put to hard Labour, to maintain themselves by it, without being chargeable to the Parish, Town or County, for any Allowance; however, they are not to be suffered to perish for Want; But in case any of these last sort prove impotent, by Sickness, Want of Ability of Body, or that their Work will not supply what is needful for the Necessaries of Nature, then in their extream Necessity there must be an Allowance by the Town, &c. *Dalt. Just. P. cap. 73. fol. 170.* And where the Parents are able to work for their Children, so that it will maintain them, they may be compelled to do it; but if overburthened, the Overseers at their Discretion may take what Children they think fit off their Hands, and put them Apprentices, or otherways dispose of them to Nurses, or else allow the Parents something to enable them to keep them.

The Father, Grandfather, Mother, Grandmother, Children, and Grandchildren, are obliged to relieve those so allied to them that are poor and impotent, if themselves are of Ability, in such Manner as the Justices shall order it at their Quarter-Sessions, by assisting the Party or Parties, and upon Refusal or Neglect to obey their Order, a Penalty of 20 s. every Month

Month is forfeited to the Poor of the Parish, to be levied by the Churchwardens, Overseers, or one of them, by Distress and Sale of the Offender's Goods, having first to that End received a Warrant under the Hands and Seals of two Justices of the Peace, one to be of the *Quorum*, and in Defect of such Distress, the Justices may commit the Offender to Prison without Bail or Mainprize, to remain there till the Forfeiture be paid. 43 Eliz. 2. *Dalt. Just. P. cap. 73. fol. 156. Resol. Judges 16, 17.* But a Grandfather-in-Law, if he has no Estate with the Grandmother in Marriage, or that after comes to her, is not held liable to this, though he brings her considerable of his own, or is afterwards enabled by his Industry, or at least if the latter, which is held doubtful, he is obliged to it no longer than his Wife lives. *Second Part of Bulstr. Reports, fol. 245, 246, 247.*

If any Poor beg in the Parish, a Licence must be granted for it by the Overseers; and if in the Highways, by those Overseers. And by an Order of Sessions, a Cottage may be erected on the Waste of a Manor, and poor Inmates may be lodged therein; but it is afterward to be employed to no other Use. And such Poor as cannot get Work, and are able, are to be set on Work by the Overseers; and a Justice of the Peace may send such to the House of Correction, that being employed by them and the Churchwardens, will not work, being not otherways able to maintain themselves; and they, with the Consent of two Justices of Peace, or more, one being of the *Quorum*, may set up, occupy, and use any Mystery, Trade or Occupation, for the better Relief of the Poor in the Parish, Town or Place within their Di-

stricts, to set them on Work, which is very commendable, and may be wished it were more put in Practice.

C H A P. LXXII.

What relates to the Office of the Overseers in taking Care to put poor Children Apprentice, and what the Indenture is required to bind them, &c.

IN this Care must be taken, that they must be so placed, as not again to be chargeable to the Parish; and that they may learn such suitable Crafts and Mysteries, as when their Time expires, with Labour and Diligence, they may be enabled to keep themselves and Children, their Age to be above 7, and under 15, when they are so placed; and in doing this, the Overseers must have the Consent of two Justices of the Peace, and they may bind Men-children to the Age of 24, and the Female to the Age of 21, or till she be married, which first shall happen; but it must be within the Parish or Hundred, and they may give Money, if they cannot put them off without; and the Masters refusing to take them, when so offered, may be presented and indicted for the same, upon the Stat. of 43 *Eliz.* at the Assizes or Sessions of the Peace; and Parents refusing to let them be so put out Apprentice, without good Cause shewed for it, may by the Justice, be bound over to answer the Default, and the Children refusing, may be sent to the House of Correction till they will comply. He or she must be bound by Indenture: The Form of which, I shall here set down.

The

*The Form of an Indenture of an Apprentice put out
and bound by the Overseers, &c.*

THIS Indenture, made the 20th of December, in the sixth Year of the Reign of our most gracious Sovereign Lord George, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, &c. Anno Dom. 1720. Witnesseth, That A. P. and L. G. Overseers of the Poor in the Town of Nottingham, and K. E. Churchwarden of the same Town, by and with the Consent of G. B. Esq; and L. G. Esq; two of His Majesty's Justices of the Peace of the County of Nottingham, have by these Presents placed and bound L. C. being a poor and fatherless Child, as an Apprentice to W. H. of Nottingham aforesaid, Shoemaker, and as an Apprentice with him the said W. H. to dwell from the Day of the Date of these Presents, until he the said L. C. shall come to the Age of 24 Years, according to the Statute in that Case made and provided; by and during all which Time and Term, the said L. C. shall the said W. H. his Master, well and faithfully serve, in all such lawful Business as the said W. H. shall put him the said L. C. unto, according to his Power, Wit, and Ability; and honestly and obediently in all Things shall behave himself toward his said Master, and all the rest of the Family of the said W. H. And he the said W. H. for his Part promiseth, covenanteth and agreeth, That he the said W. H. the said L. C. in the Art and Mystery of Shoe-making, in the best Manner that he can or may, shall teach, instruct or inform, or cause to be taught, instructed or informed, as much as thereunto belongeth, or
he

he the said *W. H.* knoweth : And also during all the said Term, to find unto him his said Apprentice, Meat, Drink, Linen, Woollen, Hose, Shoes, Washing, and all other Things necessary or needful for an Apprentice. In *Witness* whereof, we the said *W. H.* and *L. C.* have interchangeably set our Hands and Seals, the Day and Year of Date abovesaid.

C H A P. LXXIII.

How far the Overseer is concerned about settling the Poor ; with some nice Points relating to Bastards, &c.

BY Settlement of the Poor, it is here meant, such as are likely to be troublesome and chargeable to the Parish or Place where they reside. And by the 13 & 14 *Car. 2. cap. 12.* the Overseers and Churchwardens, making their Complaint to any Justices of the Peace within four Days after any Person that is poor and likely to trouble the Parish, cometh to settle in a Tenement under 10 *l.* by the Year, two of the Justices, one being of the *Quorum*, by Warrant under their Hands and Seals, may remove such a Person to the Parish where they last had a legal Settlement by the Space of 40 Days or more, unless Surety can be by them given, that the Justices shall approve of, to secure the Parish, &c. from Damages or Charges that may ensue, and all Persons aggrieved have free Liberty to appeal to the Quarter-Sessions.

In Harvest or Work time, poor Persons settled in a Parish, having a Certificate under the Hands of the Minister of the Parish, one Churchwarden

warden, and one Overseer of the Poor, declaring them Inhabitants there, may go into any of the adjacent or distant Parishes to work; and if they do not return, by reason of Sickness, or any other Impediment, it shall not be accounted a Settlement, though they stay after their Work is done; and if any return from the Parish from whence they are removed, it is in the Power of the Justice of the Peace to send them to the House of Correction, where they may be punish'd as Vagabonds, or at his Discretion he may send them to a common Workhouse, there to be employed at hard Labour; and upon the Refusal of the Churchwardens or Overseers of the Poor to receive them, and provide them Work, &c. they may, by the Justice, be bound over to answer it at the Sessions or Assize.

By Stat. 8 & 9 W. 3. Poor Persons may remove to other Parishes, by Certificate from the Churchwardens and Overseers, subscribed by two Justices, &c. owning them Parishioners, and agreeing to receive them when they become chargeable, &c.

In case of a Bastard-Child born in any Parish, the Churchwardens and Overseers for the Poor may, in saving the Parish harmless, seize so much Goods, Profits or Lands to its Use, belonging to the lewd Mother or reputed Father, as will discharge the said Parish, or toward the discharging of it, from such Charges as may thereby incur, which is to be awarded and settled by Two Justices of the Peace; and an Order may be made to the Churchwardens and Overseers, by Sale or otherways, to dispose of the Goods as to them shall seem meet, and the Profits, or so much of the Profits of their Lands as by Sessions shall be ordered.

ordered. *Vide* if the Act of 13 & 14 Car. 2. r. 2. be revived.

No Man is to be put out of his Dwelling in a Town where he is lawfully settled, or to be sent to the Place of his Birth, but a vagrant Rogue, nor to his last Habitation, nor is he to be maintained by the Town unless he be impotent, but they ought to settle themselves to Labour, if they are able and can get Work; and if Work cannot be gotten by them, the Overseers are to set them on Work; and if after they wander, begging in other Parishes, they may be charged as Vagabonds, and sent to the Place of Birth. *Dalt. Just. P. cap. 84. fol. 109*

If a Scholar in a Grammar-School or University be suspected to be an Incumbrance, if he doth become impotent, and is like to be a Charge to the Parish where he is, he may be sent to his Parents, if he have any, otherways to the Place where he was last legally settled before he came to School. *Resol. Judges 1633. sect. 32.*

If a Woman be sent to the House of Correction, and there delivered, the Child must be sent to the Parish whence the Mother came, and there relieved.

If a Woman be travelling, and hath her Child with her, and is for any Fault or Breach of Statute apprehended and sent to Gaol, altho' she be executed for her Crime, the Child is not to be charged on the Parish where the Gaol is, but must be sent to the Place where it was born, if it can be known, otherways to the Place where the Mother was apprehended, according to the Opinion of Sir Nicholas Hide. 3 Car. 2.

If a Woman unmarried be hired Weekly or Monthly, or by the Half Year or Year, in a Parish, and there be gotten with Child, and so go-
eth

eth into another Parish, and there for two or three Months is settled in Service, and being then discovered to be with Child; in this Case she must be settled in the Parish where she is, and must not be sent to the Parish where she was before, *Resol. Judges 1633. sect. 12.* If a Woman be delivered of a Bastard-Child in one Parish, and so departeth into another Parish with her Child; in this Case the Child, after being nursed, is to be sent to and settled in the Place where it was born, and not to remain with the Mother. *Resol. Judges 1633. sect. 23.*

C H A P. LXXIV.

The Office of the Overseers of the Poor in making Rates, and how they must behave themselves therein; and of making and delivering up their Accounts upon going out of their Offices, &c.

THE Overseers for the Poor, with the Churchwardens, or the major Part of them, for enabling them to perform the Things they have in Charge, may raise Weekly, or otherways, by Taxation of every Parson, Vicar, and the Occupiers of Lands, Houses, or Tithes, Coal-mines, or Under-woods saleable within their Parish or Divisions, such a Sum as in Moderation they shall think fit; but the Rate must be allowed and confirmed under the Hands of two Justices, one being of the *Quorum*, and then may be levied by Distress and Sale of Goods, upon Refusal of Payment or Neglect, by Virtue of a Warrant from any other two Justices, one being of the *Quorum*, rendering the Overplus to the Owner, and for Default of Distress, two Justices

Justices may commit the Party to remain in Prison without Bail or Mainprize, till Payment be made, or the Justices think fit to discharge him. 43 Eliz. cap. 2. Dalt. Just. P. cap. 73. fol. 148. Wingate's Stat. Tit. Poor People. And these Rates ought to be made according to Mens real and visible Estates within the Place only, and not according to Estates elsewhere. And further,

Observe, That a Parish in Reputation is deemed good within this Law: For granting G. a Parish very ancient, having Officers in it, nevertheless here is a Town within the Parish, that for Time out of Mind, at least a long Time, hath been used and reputed as a Parish, and hath all Parochial Rights, as Churchwardens, &c. in such a Case it may be rated as a Parish towards the Poor. Hutton's Reports, fol. 93. and others.

And there must be Care taken in rating and levying this Tax, for it must lie on the Tenants occupying Land, &c. and not on the Landlord, in nor out of the Parish, for the first is only chargeable for the Land. Bulstrode 1 Part, Rep. 354.

Any Parson having a full Tenth in a Parish, may be rated a Tenth Part. Resol. Judges 1633. sect. 33.

If any Person occupy Land lying in several Parishes, he must in this Rate be accountable for them proportionably in the Parishes where they lie; but it seems reasonable, that for his personal Estate he should be chargeable in the Parish where he is an Inhabitant.

In rating Stock or Goods, it is to be rated according to the Proportion of Land Rent, as five Pounds

Pounds a Year in Land, to be held equal with 100 l. in Goods or Stock.

In a Parish where the Inhabitants, by reason of their own Poverty or Fewness, are not able to relieve their Poor, two Justices, one being of the *Quorum*, may, by Rate tax other Places and Parishes within the Hundred, or all the Hundred, if Necessity requires it; and this not proving sufficient, the Justices in their Sessions may tax the County in Part, or wholly, if they think fit. 43 *Eliz. Wingate's Abridg Stat. Tit. Poor People.*

If a Parish shall reach to and lie in two Counties, or one Part thereof to lie in any City or Corporation Town where there are proper Justices, in that Case the Justices of each County are to meddle so much as appertains to the Part lying in the County of which they are Justices, and so of the other Parts; and yet the Overseers shall, without dividing themselves, execute their Office in all Places within the said Parish, but shall give up their Account to the Justices or Head Officers of both Places. *Wingate's Stat. Tit. Poor People.* 43 *Eliz. c. 2. Dalton's Just. P. cap. 73. fol. 156.*

The Overseers of the Poor are, within Four Days after their Year is expired, and other Officers nominated their Successors, to give up their Account before two Justices of the Peace. one to be of the *Quorum*, chiefly to this Purpose.

1st, What Stock of Money they have received or rated, and not come to their Hands. 2^d What Stock of Stuff or Ware is in their own, or in the Hands of any of the Poor. 3^d. What Apprentices they have put out and bound, according to the Statute. 4th. What Poor they have set to work or relieved. 5th. What Poor they have

have suffered to beg or wander out of the Town in the Highways, or in their Town without their Directions. 6th. Whether they have met Monthly to consider of such Matters as are properly belonging to their Office. 7th. Whether they have made their Rates indifferent upon the Parishioners, according to their Ability. 8th. Whether they have truly endeavoured to gather and levy all Assessments. 9th. Whether in them there has been any Neglect of the Justices Warrants, directed to them on any Account, especially those for collecting any Forfeitures, according to the Statute 43 *Eliz. cap. 2. Dals. Just. P. cap. 73. fol. 153.*

Note, By the Statute made for the burying in Woollen, 30 *Car. 2.* the Justices may not allow the Accounts of the Overseers of the Poor, till such Time as they have given them an Account of the Burials and Certificates, and of their levying the Penalty by that Statute directed.

If they refuse to give in their Accompts, or to make and yield a true and perfect Account to the said Justices, of such Money and Stock in their Hands as has been mentioned, two Justices of the Peace, one being of the *Quorum*, may commit them to the common Gaol, not to be dismissed till they shall render a true Account, and paid or satisfied the succeeding Overseers so much of the Sum and Stock, as shall any Ways appear to be remaining in their Hands; and upon making a false Account, lie liable to be bound over to the Sessions or Assizes, where an Indictment may be preferred against them. *Dals. Just. P. cap. 3. fol. 111.* Or the Justices, or any two of them, may grant a Warrant to the succeeding Overseers, to levy the

the Sum upon the Goods and Chattels of the Offenders, by Distress and Sale; and for Want of such Distress, may commit them to Gaol till Satisfaction be. But note, upon Sale, the Overplus is to be returned to the Owner. 42 Eliz. cap. 2.

If it so happen that any Part of such Stock shall be found, or known to be in the Hand of any Poor; upon Refusal of Delivery, two Justices may, by Warrant, cause the Value to be levied, or for Want of wherewith on which to make Distress, commit the Party to Prison, as in the former Cases. *Dalt. Just. P. cap. 72. Ibid.*

And for these and all other Faults and Negligences of Churchwardens and Overseers, relating to the Execution of their Office, as to the Poor, &c. for every such Default made by any of them, he is to forfeit 20 s. upon Proof, by Confession, or Examination of Witnesses, to be levied by Warrant of two Justices of the Peace, by Distress and Sale of Goods, or for Want of it, the Offender to be imprisoned, and the Money so levied to be employed to the Use of the Poor of the Parish. *Dalt. Just. P. cap. 73. fol. 155.*

43 Eliz. cap. 2. So that by the Law great Care is taken that these Officers shall not be wronged in their just Rights, nor the Parish or Poor be wronged by them.

C H A P. LXXV

The Office of the Overseers of the Poor in receiving Fines to the Use of the Poor: Of Destroyers of Game, unlawfully Fishing; also relating to Measures, and burying in Woollen.

IT is the Business of the Overseers of the Poor, to receive such Fines or Forfeitures as accrue from Offences in such, as in the Night-time kill or take any Conies upon the Borders of Warrens, or any Grounds where the Owner may lawfully keep Conies, the Parties so killing or destroying not being Proprietors, nor allowed by the Owner.

Also of such as use Hare-pipes, Snares, or such like Implements; or take Fish by any Nets, Angling, or other Device, in any Water or River, or shall be assisting thereunto, without the Consent of the Lord of the Manor, or Owner of the Waters; and the Sum for these Offences is to be amerced by the Justice of Peace before whom the Party offending shall be convicted, the Sum not exceeding Ten Shillings, over and above what the Owner may have or recover for the Damage sustained; and the Party, for Default of Payment, may be sent by the Justice to the House of Correction, for any Time not exceeding a Month, unless he enter into Bond with one or more Sureties to the Party aggrieved, the Sum not exceeding Ten Pounds, never in the like Manner to offend any more; and for these Offences the Offender's Goods are liable to Distress and Sale; but then the Imprisonment

sonment must be remitted upon Satisfaction that Way made. 22 & 23 Car. 2. cap. 24.

As to Weights and Measures, the Overseers for the Poor, as well as other Officers, ought to have a special Regard to them : and in this Case there ought to be one Weighr, one Measure, and one Yard, according to the Exchequer Standard, in every Part of the Realm, as well within as without Places privileged ; and those that keep different Weights and Measures, not agreeing in all Respects with the Standard to buy and sell by, being convicted thereof, by the Oath of two Witnesses, before any Justice of the Peace, or Head Officer of the Town or Place where the Offence is done, shall forfeit Five Shillings, to be levied by the Churchwardens or Overseers of the Poor of the Parish where the Offence is committed, by Distress and Sale of Goods upon Warrant, and for Want of such Distress, the Offender to be committed to Prison without Bail till Payment be made : and if any Person be troubled for any Matter concerning his Office, in this Case he may plead the general Issue, and give in Evidence the Act of 17 Car. 2. and to have treble Costs, if the Suit so brought prove vexatious. *Dalt. Just. P. 112. fol. 246, &c.*

The Penalty of 5*l* is to the Use of the Poor, where any Person shall be buried in any Garment, Winding-sheet, Shroud, or other Materials not made of Sheeps Wool only ; or if the Coffin the dead Body is put into be lined or faced with any Thing made of any Material but Sheeps Wool ; and the Churchwardens and Overseers of the Poor are to take Care of this in all Respects, that the Forfeitures be duly levied. See more 30 Car. 2. cap. 3, &c.

And

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And thus much briefly for the Office of the Overseers of the Poor. See more in the Office of a Constable and Churchwarden, where many Things belonging to their Office are mentioned, and therefore here omitted, or but slightly touched on.

C H A P. LXXVI.

Of Fairs and Markets, Toll takers, Clerks of Markets, their Office and Duty in some Particulars, &c. Measures and Measuring, Sealing, &c.

A Fair must be kept no longer than the Grant or Use by Custom will warrant; and Goods sold after the Expiration of the Time, as Merchandize, &c. the Seller shall forfeit to the King double the Value of what is sold, and the Prosecutor shall have the Fourth Part; the Fair must be duly proclaimed by the Sheriff, or Lord of the Fair, and the Time it is to continue mentioned, the Place or Ground appointed, set out, and Care taken that there be no Riots or Disturbance, but an orderly keeping of it during the Time it lasts.

Where there is a Beast Fair for Horses, Mares, Geldings, and other Cattle, they must have their appointed Places, that those that resort thither may have a Certainty where to find them; and one sufficient Person or more must be appointed to take Toll, and keep the said Place from Ten in the Forenoon every Day till Sun-set, during the Time of the Fair or Market, upon Pain to forfeit for every Default 40 s. And in tolling, the Party thereto appointed must have before him the Parties bargaining, upon his tolling any Horse,

Horse, Mare, &c. and must write in his Book the Christian Names and Surnames of all the Parties; also their Dwelling-Places, with the Colours, and some particular Marks of the Horse or Mare, &c. so sold or bargained for, on Penalty to forfeit for every Default 40 s. and he is to have one credible Person, known to him, to vouch the Horse or Mare, &c. and testify his Knowledge of the Seller, and his Name and Place of Abode must be entered with the others in the Book, with the Colour, Mark, or Price of the Horse or Mare, sold or exchanged; and the Buyer requiring it, may have a Note in Writing out of the Book, reciting the Contract, and Toll-Man's Hand thereto, for which he may take Two-pence.

If any Toll-taker suffer a Sale to pass without a Voucher, unless he well know the Party, and every Party making a false Testimony or Avouchment, or every Seller, unknown not bringing a Voucher, and causing the same to be enter'd, forfeit 5 Pounds, one Moiety to the King, and the other to the Prosecutor, and the Sale of the said Horse, &c. to be void. Yet notwithstanding such Vouching, the Owner of a stolen Horse, &c. so sold, his Executors or Administrators, claiming him within six Months after the Stealing, may redeem at the Price he was sold for, making Proof that it is his, and that it was stolen, by two sufficient Witnesses, before a Justice of the County where he is found, or the Head Officer or Magistrate of a Corporation, and the Price to be such as the Buyer upon Oath shall testify before the Justice he paid for him; and if the stolen Horse be not sold in open Fair or Market, and lawfully coll'd, the Right is in the Owner
from

from whom he was stole, and he may seize or replevy him in any Place where he finds him.

As for Measure there shall be only the *Winchester* Bushel, and no other Bushel, and that to contain eight Gallons; and whoso sells by any other, according to the 22 *Car. 2. cap. 8.* forfeits 40 *s.* And upon the Clerk of the Market's refusing to seal such Measure as shall be full gauged, he forfeits for the first Offence 5 *l.* for the second 10 *l.* Or if the Clerk of the Market exact or takes more Fees than is due, that is, above One Penny for sealing a Bushel, a Half-penny for half a Bushel, and One Farthing for Measures of less Proportion, he incurs, and shall undergo the Penalty in the Statute *Car. 2.*

A Brass Bushel is to be chained to a Post, or publick Place in the Market Place, at the Charge of the Person taking Toll, for the publick Use of Measuring, upon Penalty of forfeiting of Five Pounds. 22 *Car. 2. cap. 8.*

Whosoever shall sell or buy Corn without Measuring, being thereunto required, so selling or buying it in Sacks, or Bags, or in any other Thing, shall forfeit the said Corn, or the Value thereof to the Party making his Complaint of this Offence, against the Statute 22 & 23 *Car. 2. cap. 12.* And upon Complaint, the Defendant, by the Oath of one or more Witnesses before a Justice of the Peace, must prove, that he or they did buy or sell according to the Statute of 22 *Car. 2.* and 23 *Car. 2.* or else pay the Forfeitures by the latter directed, which upon Warrant may be levied by Distress and Sale of Goods; the Warrant to be given under the Hand and Seal of one or more Justices before whom such Conviction shall be, one Half to the Poor of the Parish where the Offence is committed, and the other to the Informer. *Ibid.*

The Duty and Office of the Surveyors of the Highways and Bridges; Scavengers in *London, Westminster, Borough of Southwark, &c.* with more particular Directions what they are to do and observe therein, and how to behave themselves, and order Matters for the due Discharge of the said Office.

C H A P. LXXVII.

Surveyors of the Highways, their Office and Duty in Mending the Ways, and Rating.

TH O' Ways are generally called the King's Highways, yet of Ways there are three Sorts: 1. A Way where Men have a just Right to walk in, pass and repass. 2. A common Foot-way and Horse-way. 3. A Way for Carts and Wains, and all Sorts of Carriages; and this latter is most properly call'd the King's Highway, free for Himself and Subjects to pass and repass at all Times; whereas some in the other Sense are Ways only to Grounds, Houses, &c. and Ways by Custom; and some again upon Sufferance in the publick Ways. All Nuisances or Stoppages are indictable, especially if not timely removed on Notice given, or the Lord of the Soil for any digging or spoiling the Highways, may bring his Action against the Offenders.

The Surveyors, duly chose by the other Officers, with the Advice of the Inhabitants, or the major Part of them, upon publick Notice before given, are diligently to oversee those that work on the Days appointed for the digging and carrying Gravel and other Materials for mending such Ways where they shall find them defective, giving them Directions in order thereto; and upon publick Notice or Warning, the Persons so qualified are to send their Carts and Labourers.

Every Person having in his own Occupation a Plough Land, in Tillage or Pasture, or keeping a Plough or Draught in the same Parish, is liable to send, according to the Custom of the County wherein he resideth, or is so legally charged, a Wain or Cart, with Oxen or Horses, fit for Carriage and Work of this Nature, attended by two able Men, who shall do such Work as shall be by the Surveyors appointed them, for the Space of — Days, working Eight Hours every such Day, under the Penalty of forfeiting for every Day's Default 10 s. and every other Household-er, Cotter or Labourer, not being a hired Servant, shall in Person attend the Service to work, or send an able Man in his stead, under Penalty for every Day's Default to pay 12 d. and all other Persons, being no otherways chargeable; but Cottages being Subsidy, 5 l. in Goods, or 40 s. by the Year in Lands, or above, they must find two able Men to work in the Service.

It is in the Discretion of the Surveyors, if there be more Carts, Wains, &c. than are necessary, to appoint two able Men instead of a Team, on Forfeiture of 12 d. each, in case of Defect. And if in six Days the Ways cannot be conveniently mended, as is the usual Time, they

they may set a farther Time; but then they must make Payment for it according to the Rate of the County; and if hereupon there be no Agreement, the Justice may settle the Rate.

If Materials be wanting, the Surveyors may take the small loose Stones from any Man's Quarry, and such Rubbish as he finds there, it being near the Road, without paying for it, but must not dig nor take away the great Stones. They may dig Gravel and Sand for the like Use near any Highway in other Mens Ground, not being their House, Yard, Orchard or Garden, without paying for it, the Pit not exceeding Ten Foot in Breadth, and the like in Width; which, as soon as the Work is over, must be covered up, and made good at their Charge who cause it to be digged: or if it be not so filled up within the Space of one Month, they forfeit Five Marks, to be recovered by the Owner, by Action of Debt.

All Owners of Ground, adjoining to the Highways, are to keep their Hedge low and upright, that the Boughs or Brambles standing out may not hinder or offend Travellers, and that so the Sun may shine on the Ways to dry them; and such as are negligent in this, may be presented and indicted, and thereupon forfeit 10 s. besides their Charges.

And in case Ditches are stopped up with Mud and Ouse, that should be Drains to the Highway, so that the Water lies in it, and cannot have a current Passage, the Owner of such a Ditch or Water-Drain shall forfeit 12 d. for every Rod so neglected to be scoured, by 18 Eliz. cap. 10. And the Surveyor hath Power to make Conveniencies for draining the Highways, as Sluices, Outlets of Water, &c. into

any Man's Ditch or Ground, for the better and more speedy Conveniency of passing the Road. If any Man upon cleansing a Ditch cast the Soil into the Road, and suffer it to lie there above the Space of six Months, he is liable to pay 12 *d.* per Load for as many as shall be adjudged to be there.

If a Justice of the Peace shall upon his own Knowledge, of any Nuisance on the Road, make a Presentment, it stands good; and two Justices, one being of the *Quorum*, may make the Amercement, or Fine to be levied on the Offender.

Surveyors are chosen out of Persons having 10 *l.* per annum; Personal Estate of 100 *l.* Value; or Renters of 30 *l.* a Year; or for Want of such, out of the most sufficient Persons; of which Lists are to be given in to Justices of Peace, by Constables, Churchwardens, &c. If they do not take upon them the Office, they forfeit Five Pounds: And not giving an Account of the State of the Ways, they forfeit Five Pounds. Justices are to hold a Special Sessions for the Highways once in four Months, &c.

These Officers, viz. Surveyors, have in their Care all Bridges within their several Parishes or Liberties, to see they are kept in good Repair from Time to Time, at the Charge of the Parish, Hundred, or as the Custom has been, and is continued; and if a Custom has therein ceased for a Time, it may be revived; for in some Cases, particular Persons are bound by Tenure of Land, &c. to repair Part, or the whole of a Bridge, &c. without a Parish Charge. But to instance these Particulars, would be too tedious for my intended Brevity; and many Times a whole

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County lies chargeable to be rated for the Repair of a Bridge, &c.

C H A P. LXXVIII.

The Office of a Surveyor, in draining the Roads, making Presentments; and in what Case a Justice of Peace may present, how the Surveyor shall be reimbursed Moneys laid out for Materials, &c.

A Surveyor may cause a Water-course or Spring in the Highway, within his Parish, to be turned into another Man's Ground, or his Ditch next adjoining to the said Way, for the Conveniency of keeping the Road dry, as in his Discretion shall seem fitting. *Dalt. cap. 50. fol. 103.*

The Surveyors, or any one of them, have Power to present to the next Justice of the Peace every Default, upon the 2d and 3d of *Philip and Mary, cap. 8.* and 5 *Eliz. cap. 14.* within one Month after the Default made, on the Penalty of 40 s. and the Justice under Penalty of 5 l. must certify the same at the next Quarter-Sessions; where the Bench of Justices have Power to enquire of the Default, and to set such Fine on the Offender as any two of them, one being of the *Quorum*, shall think fit. 5 *Eliz. cap. 13.*

If any Justice of the Peace present in Sessions upon his own Knowledge, it shall be a good Conviction; whereupon any two of the Justices, the one being of the *Quorum*, may assess a Fine as well as if the Matter had been found on the Verdict of 12 Men; but in this Case the Offender shall be, as in other Cases, admitted to his

Traverse. 5 *Eliz. cap. 13. Rep. 199* and all such Fines and Forfeitures are to be bestowed and employed towards the mending and bettering of the Highways in the Parish where the Offences are committed. *Wingate's Abridg. Stat. Tit. Highways. 2 & 3 P. & M. cap. 8.*

Where Surveyors have laid out their Money for Materials to mend the Ways, without which there were none fitting to be had; it is enacted by the 2d and 3d of *William and Mary*, That upon Notice given by the Surveyors of Highways to the Justices of the Peace at their Sessions, and Oath made of what Sum or Sums of Money are expended to that Use and Behoof; the Justices thereupon, or any two of them, under their Hands and Seals, may cause an equal Rate to be made for the reimbursing the Surveyor or Surveyors, the Moneys by them to the Use aforesaid laid out, upon all the Inhabitants of such Parish or Township where it was expended, in Rates according to the Rules and Methods prescribed in 43 *Eliz. cap. 2.* for the Relief of the Poor; which Act directs the Tax to be laid on each individual Inhabitant; as Parson, Vicar, and others; and every Occupier of House and Land, Tithes impropriate, Improvements of Tithes, Colonies or Saleable Underwoods in the said Parish, so to be rated, and the Rate so allowed and settled by the Justices in their said Sessions, shall be gathered and collected by the Surveyor or Surveyors of the Highways; and if any one refuses to pay the Money according to the Rate assessed, it is lawful for the Surveyors to levy it by Distress and Sale of the Goods and Chattels of the Persons so refusing, reserving reasonable Charges for making the said Distress, and rendering the Overplus to the Owner, if any there be.

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By the 3d and 4th of *William and Mary* it is farther provided, That whereas the Fines imposed and set on the Presentment of a Justice of the Peace, and other Fines and Issues, for not repairing the Highways, being oftentimes returned into the Court of *Exchequer*, and other Courts, and so levied upon some particular Inhabitants, and no Provision made to reimburse them; now on the contrary, Fine, Issue, Penalty or Forfeiture, shall not for the future be returned into any of the said Courts, but be levied and put into the Hands of the Surveyors, to be applied towards the Repair of the said Highways; and if it be hereafter levied on one or more of the Inhabitants, his or their Complaint for Redress lies to the Justices of the Peace, at their Special Sessions; and they, or any two of them, by Warrant under their Hands and Seals, may cause a Rate to be made, according as before set down, for the reimbursing the Surveyors of the Money laid out for the Repair of the Highways, or of such Inhabitant or Inhabitants as the Money shall be levied upon; which Rate, so made and confirmed, shall be collected by the Surveyor or Surveyors; and he or they, within a Month next after the making and confirming the Rate, must pay unto the Inhabitant or Inhabitants such Money so levied on him or them, as before recited.

C H A P. LXXIX.

Directions to Surveyors in case of Rescues upon Seizure, and what relates to them as to Penalties concerning Wains or Carriages on the Road, &c. And some Special Cases relating to Highways.

IF any Person or Persons shall resist or make forcible Opposition against any of the Persons employed in the due Execution of the Acts of Parliament, 2 & 3 Ph. & M. c. 5. and 18 Eliz. 22 Cap. 2. made for the more effectual Amendment of the Highways, or shall rescue any Goods or Cattle taken in Distress by vertue thereof, being convicted by the Oath of one credible Witness before any one Justice of the Peace, or by the View of the Justice himself, for every such Offence the Offender shall forfeit 40 s. and if not paid in seven Days, the Party to be committed to the County-Gaol where the Offence was committed, to remain till paid; and this is to be delivered to the Surveyor or Surveyors of the Highways in the Parish where the Offence was committed, and employed for the amending the said Ways. 22 Cap. 2 cap. 12.

All Travelling Wains, Carts or Carriages, by Way of common Carriage, are not to go with a Team on the publick Highways with above five Beasts at Length; and if they shall drive with a greater Number of Horses or Oxen, they shall all draw in Pairs, that is, two a-breast, for such Number as they shall use, except one Horse; and in Defect of this, the Offender or Owner of the Waggon, Carriage, &c. forfeits 40 s. one
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Third Part to the Surveyors of the Highway of the Town, Village or Hamlet where the Offence shall be committed, another Third to the Overseers of the Poor, and another to the Informer; and this to be imposed on the Offender by any one Justice of the Peace of the Place or Division where the Offence is committed, upon the Oath of one credible Witness, or upon the Justice's own View, and to be levied by the High Constable or other Officer of such Place or Division, by Warrant. And a Surveyor seeing and suffering Waggons or Carts to pass with more Horses, &c. than mentioned, or in any other Order, may, upon Conviction for such his Neglect, be amerced by the Justice in any Sum under Forty Shillings, to be levied on his Goods and Chattels.

By 6 Ann & 1 Geo. Carriers are not to draw with more than 5 or 6 Horses in Length, under the Penalty of 5 l. And the Statute 5 Geo. enacts, That travelling Waggons for Hire are to be drawn with 6 Horses, and no more, on Pain of forfeiting Horses, &c.

This is very useful to be known by Country People and others, for the ending and hindering many Controversies that too frequently arise, to their great Trouble and Cost, thro' Ignorance.

Some Special Cases relating to Highways.

1. If a private Way be stopp'd or streigthen'd, or other Injuries done to him or them that have a Right to pass there, and hath a Freehold in the Estate for which he claims such Right; the Party grieved in such Case may have an Assize of Nuisance, *Quare injuste obstravit*, &c. and if he be no Freeholder, he may have an Action on

the Case, if he be obstructed in his Way: Nay, it has been resolved and adjudged, That the Party, if he be damaged in this, is at Liberty to bring either an Assize or an Action on the Case, whether the Way be in Part, or wholly stoppt; and indeed, Actions upon the Case are of late most usually brought.

2. If a Highway be not repaired, and I suffer Damage by the spoiling my Cattle or Goods, I cannot have an Action on the Case against him that ought to repair it; for this is an Action popular, and in no such Case a single Person shall have an Action, but it shall be presented in the Leet or Torn, and there be redressed and punished.

3. If a Man lays a Log of Wood, or any such Obstruction in the Highway, that by Means thereof any Person is thrown from his Horse, wounded or bruised, if they have lain there by the Space of two Months or such other Time, an Action on the Case lies against the Party that laid the Logs, &c. though they be so laid before his Door in a Town, Gate or Street, for this is a Nuisance.

4. If a Pit or Ditch be digged in the Highway, and Men or Cattle fall in, and are killed or lamed, there lies an Action against the Party that digged it, and delayed to fill it up again; and he shall be obliged to pay for the Loss of the Time of a Man's Servant so lamed or wounded, till he recover; and this a Master may have for his Servant so hurt or maimed, if by that Means he loses his Service.

5. If a Gate be set and hung cross an Highway, where none hath been in ancient Time, though it be fixed and tied, that it may be opened and shut at Pleasure; yet this is a Nuisance

saunce, for it is not so free and easy a Passage as if no such Gate had been; and any Person, so offended, may pull down such Gate, Let or Hindrance.

6. If the Owner of Land stop an usual Way, and lease it to another, who doth not remove that Hindrance, an Action on the Case may be brought against him; and so if a Nuisance be erected in my Time, and I devise the Land, and the Nuisance be still continued, the Devisee may have an Action upon the Case for the Continuance of a new Nuisance.

7. If one Man has a Way over another Man's Ground, and by rooting of Cart-wheels the Way is so digged and drowned that the Party cannot so well use it as formerly, he cannot dig and drain in another's Ground; but how ill convenient soever it is, the Party owning the Ground may suffer it so to remain.

8. If a Person be rightly seized of a Waste joining to the Highway, and digs a Pit 30 Foot from the said Way, and Cattle straying unto the Waste, fall into the Pit, and are killed or wounded, an Action lies not against the Party who digged the Pit, because the making of it in the Waste, and not in the Highway, was no Wrong to the Owner of the Cattle, for it was his own Neglect in looking no better after them that they escaped into the Waste; but if the Pit had been in the Highway, as aforesaid, an Action on the Case lies.

C H A P. LXXX.

Directions to the Scavengers and Managers of Sewers in the Cities of London and Westminster, and the Borough of Southwark, relating to their Duty and Office.

AS for the Cities of *London* and *Westminster*, their Scavengers are in the Nature of Country Surveyors, where Commissioners are over them appointed, to take Care they do their Duty, and to take Cognizance of Vaults, Common-Drains or Common-Sewers, to remove Nuisances, and to see after the Pavements, Payment of Raker, and what else shall be amiss. In the Borough of *Southwark*, and Places adjacent to the aforesaid Cities, the House-keepers are to sweep and cleanse the Streets, Lanes and Alleys, and publick Places before their Houses, and bring out the Dirt or Soil fit for the Raker to take up and carry away, and the Mayor, Aldermen, and Common-Council of the City of *London*, may set out and purchase Grounds for Laystalls, to receive the Dirt and Rubbish carried out of the City, and for other Materials and Commodities. And any Person, upon Complaint of Nuisances in Defect of Pavement, Dirt or Rubbish lying beyond the usual Time, Neglect in Rakers in not duly coming and giving Notice to bring out Dust or Dirt by Ring of Bell, or such like Warning, may by the Commissioners be redressed, and the Parties offending punished, as the Statutes in those Cases provide and direct.

No Person under the Penalty of 5*s.* is to throw any Dirt or Rubbish, or noisome Thing into the Streets, that may be a Hindrance or give Offence, nor into any Lanes or Places of publick Passage, &c. or against a Wall of any Church, Churchyard, or any House; and if they throw it into any common Vault or Sink, to hinder the Current of the Drains, they forfeit 40*s.* 14 *Car. 2. cap. 2.* And those that sweep not up their Dirt for the Scavenger to take away, before their Houses in Streets, Alleys, and other publick Places, forfeit 13*s.* 4*d.* for every Neglect. 13 *Car. 2. cap. 2.*

If any hoop, wash or cleanse any Barrels or other Casks, or set out empty Casks to mend or hew rough Timber, saw Stone, for each of these Offences they are to pay 20*s.* and every Housholder is to keep the Streets, Lanes, and other publick Passages, so far as belongs to him, well paved, unto the Chancel or middle of the Street or Lane, under the Penalty of 20*s.* for every Rod that shall be defective, and 20*s.* a Week till it shall be paved or mended. To enquire after Offenders, and make such Redresses as are found Aggrievances, by applying themselves to the Commissioners, &c. and by the Statute of 2 *W. & M.* among other Things it is enacted, That the Rakers, Scavengers, and other Officers thereto appointed, shall every Day in the Week, *Sundays* and other Holy-days excepted, bring their Carts and other Carriages unto their several Charges and Divisions where they can pass, and give Notice at or before by the Ringing of a Bell there, and in Alleys and other Places where they cannot pass, that the People may sweep up and bring out their Soil, which the

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Rakers are every Day obliged to carry away, under Penalty of 40 s. for every Offence. 1

In the Place and Division where any new Street shall be made, the Justices of the Peace of that Division may take a View; and if they think it convenient to be paved, or otherways amended, they are to certify the same under their Hands to the Justices of the Peace, at the next General Quarter-Sessions for the Place where the Street or Streets are, who are to take Order for the paving or amending, as they shall think fit; and all People concerned therein, by a limited Time ordered by the Justices, are to be complying, under the Penalty of 40 s. for every Perch, upon such Offence or Default, and accordingly for a greater or lesser Quantity, and the like Sum for every Week it shall remain so unpaved or not amended; Scavengers duly chosen, refusing to take upon them the Office, forfeits 10 l. for such Refusal, and others to be chosen within seven Days after such Refusal, and to forfeit as the former upon Refusal; and the Penalties to be paid to the Surveyors of the Highways of the Place, to be employed towards the Amending the Highways and Streets of the same Parish, Ward or Division, to be levied by Distress and Sale of Goods and Chattels of the Offenders, by Vertue of a Warrant from a Justice of Peace, in any of the Places where the Offence is committed, to be directed for that Purpose to the Constables or other Officers of the said Parish, or any two or more of them; and reasonable Charge for the Distress being deducted, the Overplus is to be returned to the Owner, if any there be; and for want of Distress or Non-payment within six Days, upon Demand, or Notice left at the House of the Offender.

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Offender, in Writing, he or they so offending may be committed to the common Gaol of the County, City or Place respectively, by Warrant from any of the said Justices of the Peace, under Hand and Seal, and there to remain without Bail or Mainprize, till Payment be made as aforesaid; and so for every Person elected and refusing the Office, &c.

C H A P. LXXXI. .

Within what Time Rates are to be made, and by whom. How the Scavengers are to account, and the Penalties upon Refusal. Assessment, how to be made and levied, &c,

Within twenty Days after the Scavengers are elected, the Constable, other Officers and Parishioners, or the greater Number of them present, are to make a Rate or Assessment, according to a Pound-Rate, upon the Inhabitants of their Parish, to be allowed and confirmed by two Justices of the Peace of the Place, &c. to be collected quarterly; and if upon Demand of the Scavenger, or other Officer appointed to collect the same, Payment be refused, Distress may be made by Warrant under the Hands and Seals of two Justices of the Peace, to be levied by Distress and Sale of Goods, or for want of such Distress and Non-payment, the Offender to be imprisoned till Payment be made.

By *Stat. 1 Geo.* Scavengers may be appointed by the Quarter-Sessions in any Market-Town, and Assessments, &c. made, not exceeding 6 *d.* in the Pound.

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The Money so collected is yearly to be accounted for by the Scavengers for the Time being, before two or more of the Justices of the Peace residing in or near the Places, for which Scavengers are appointed, within 28 Days after the new Scavengers are chosen for the Year ensuing, and to be paid into the Hands of the new Scavengers, if any remain undisbursed in their Hands; and two such Justices of the Peace, upon Refusal to make Account, may commit the Refuser or Refusers to Prison without Bail or Mainprize, till he or they account and pay the Remainder.

Where in a Parish there are such Highways as cannot be amended without Help or Assessment, then one or more Assessments from Time to Time may be made upon all the Inhabitants, Occupiers and Owners of Lands, Houses, Tenements, or any Personal Estate there, usually rateable to the Poor, to be allowed, levied and collected, by such Persons as the said Justices of the Peace, at their General Quarter-Sessions, shall appoint and direct, and the Money so raised to be accounted for, and employed towards repairing such Highways from Time to Time as the Justices shall appoint or order to be levied, by the Distress and Sale of the Goods of the Persons so assessed, upon Non-payment of the same within fourteen Days after Demand.

C H A P. LXXXII.

Several Things useful to be known to Surveyors, Scavengers; Commissions of Sewers, Weights of Hay, Hay or Straw Carts standing in the Streets, Wheels of Carts, their Size; keeping of Swine, and putting out Lights, &c.

ALL the Sinks, Sewers and Vaults, made since the twelfth of King *Charles the Second*, in the City and Liberties of *Westminster*, &c. are under the Care of the Commissioners of Sewers, who have Power to cleanse, alter, or so order them, as to them shall seem best for Conveniency, or to make new ones, and to take away all Nuisances, and to take away any cross Gutters or Channells, in all or any of the Streets or Lanes within their Division.

Every Truss of old Hay brought or offered to be sold within the Cities of *London* and *Westminster*, and other Places within the Weekly Bills of Mortality, is, according to the Statute, to weigh 56 Pounds at the least from the last Day of *August* to the first Day of *June*; and from the first Day of *June* to the last Day of *August*, being new Hay of the Year's Growth, to weigh 60 Pounds, but if old Hay of the last Year's Growth 56, as aforesaid; and none to suffer their Waggon or Carts to stand in the Places aforesaid, loaden with Hay or Straw, to sell the same, after two of the Clock in the Afternoon from *Michaelmas* to *Lady Day*, nor after three from *Lady Day* to *Michaelmas*, on Penalty of 5 s. for every Offence or Neglect, one half to the Poor, and the other to the Informer; but if the

Ju.

Justice of Peace see it on View, then, upon Conviction, one half goes to the Poor, and the other half to the Scavengers. This to be levied by Warrant, by Distress and Sale of the Offender's Goods and Chattels, by the Constable, Headborough, &c. of the Parish where the Offence is committed; and in Default of Distress or Non-payment, within six Days, upon Notice in Writing, left at the Offender's House, by the Constable or Headborough, where it is not by the Act of 2 W. & M. otherwise provided, unless the Party be a Peer of the Realm, he is to be committed to the common Gaol of the City or County respectively by Warrant, and to remain without Bail or Mainprize till Payment. And by the same Statute, the Wheels of every Cart or Dray to be used for any Carriage whatsoever, from any Place within the said Cities and Places within the same, where the Streets are paved, are to be made to contain in full Breadth six Inches in the Felly, and must not be shod or wrought about with Iron Work, nor drawn with above two Horses after they are up Hill from the Water-side, upon Forfeiture of 40 s. for every Offence, to be levied by Warrant on Goods and Chattels by Distress, as in other the like Cases; though this extends not to Country Carts or Waggons that shall bring Goods to the Cities or Places aforesaid, or shall carry any Goods half a Mile beyond the paved Places of the Cities, Streets, &c. However, by an Act of 3 & 4 W. & M. cap. 12. this last Clause seems to be altered; for any Inhabitant of any of the Parishes within the Weekly Bills of Mortality, who dwells off and from the Pavement, and uses his Cart as well off as upon the Pavement; or any Brewer

Brewer or Scavenger, or other Person, employed in carrying away the Dirt and Soil in Lanes, Streets and Alleys, may use shod Wheels for Dray or Cart, and narrower than six Inches in the Fellies, notwithstanding the former Act, or any Law or Usage to the contrary. But this seems not to affect Carts, and such as carry Merchants or Shop-keepers Goods.

By the Act of 2 W. & M. no Person or Persons are to keep, breed, or feed Swine, in any Part of the House, Backsides of the paved Streets of the said Cities, Boroughs or Parishes, where such Streets are contiguous, on Penalty of forfeiting them to the Use of the Poor of the Parish where such Swine shall be kept.

All Householders in the Cities and Liberties of *Westminster*, and Counties of *Surrey* and *Middlesex*, comprized within the Bills of Mortality, are by a new Act, where their Houses adjoin to, and are near the Street, to hang on the Outside of their Houses next the Street, every Night, from *Michaelmas-Day* to *Lady-Day*, Candles or Lights in Lanthorns, from Time to Time as it shall grow dark, to continue burning till twelve of the Clock in the Night, on Pain of forfeiting 2 s. for every Default, unless such as shall agree to pay and make use of the Convex Lights or Lamps, to be placed at such Distance in convenient Places of the Streets, as two or more Justices of the Peace shall approve of.

As for the several Acts for mending particular Ways, Bridges, &c they are very many, and not concerning a Surveyor in general. What is written may suffice, not doubting, but considering what is set down, which is the most material, it will in a great Measure inform him well

well to discharge his Office, to the Content and Satisfaction not only of the Parishioners, but of the Laws; requiring him in all Respects to perform his Duty, as a trusty and knowing Surveyor or Scavenger.

Useful Observations on some late Statutes, with Cases adjudged.

C H A P. LXXXIII.

The Law at present as to laying of Wagers.

BY Statute 7 *Anna*, all Wagers to be laid upon any Contingency relating to the present War, and all Policies of Assurance, Bonds, Notes for the Payment of any Sum or Sums of Money upon any such Contingency, shall be void.

And the Persons that shall lay such Wagers, or Brokers, Notaries, who shall be concerned in making such Wagers, shall forfeit double the Sum of such Wagers.

Provided this Act shall not extend to any Assurance on any Ship or Vessel, or the Cargo or Lading of any Ship or Vessel, employed in any Voyage, nor to any Bonds of Bottomree to be made on any Voyage, Ship or Vessel.

C H A P. LXXXIV.

Note, The Punishment of Thieves, Housebreakers and Robbers, in Shops, Warehouses, &c. by burning in the Cheek, taken away by Statute 5 Anna. and burning in the Hand restored, and committing to the House of Correction. Clergy may be prayed without reading the Book.

BY the Statute of the 10th and 11th of *William III.* every Person or Persons that shall at any Times or Times, by Night or by Day, in any Shop, Ware-house, Coach-house, or Stable, privately and feloniously steal any Goods, Wares or Merchandizes, being of the Value of 5 s. or more, although such Shop, Warehouse, &c. be not actually broke open by such Offender; and altho' the Owners of the Goods, or any other Person, be not in such Shop, &c. to be put in Fear, or shall assist any Person to commit such Offence, being convicted upon Verdict or Confession, or being indicted, shall stand mute, or will not answer directly to the Indictment, shall be excluded of and from the Benefit of the Clergy. The Prosecutors that shall apprehend and prosecute such Offender till Conviction, shall have forthwith after every such Conviction, a Certificate under the Hand of the Judge, certifying such Conviction, and the Place where the Offence was committed; such Person shall and may be discharged of and from all Parish and Ward Offices: The Certificate to be enrolled by the Clerk of the Peace.

By

By the Statute 5 *Anna*, the Prosecutor of a Burglar shall have 40 *l*. within one Month after Conviction, to be paid by the Sheriff of the County, where, &c. upon Tender of the Certificate, if any Dispute arise between the Apprehenders, the Judge or Justices before whom, &c. to determine the Shares and Proportions, upon Default of Payment by the Sheriff, he shall forfeit double the Money. If any Watchman or other Person shall be killed by any such Burglar, his Executors or Administrators shall receive the Forty Pounds.

Buying of stolen Goods, knowing the same to be stolen, or if any one shall harbour or conceal such Felon, knowing him to be so, shall suffer Death, as a Felon Convict.

C H A P. LXXXV.

Observations concerning Gamesters and Gaming-Houses.

BY the Stat. 16. *Car.* 2. c. 7. If any Person or Persons, of any Degree or Quality whatsoever, do or shall, by any Fraud, or Deceit, in playing at Cards, Dice, Tables, Bowls, Cock-fightings, Horse-Races or Foot-Races, or by bearing a Part in the Shares, or Part in the Stakes, or in betting on the Hands of such as play, &c. win any Sum of Money or other valuable Things whatsoever, the Person so offending shall, *ipso facto*, forfeit treble the Value of the Money, or other Thing so obtained, and the Informer or Prosecutor recover treble Costs. If any Person shall play at the said Games, or
any

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any other Game whatsoever, (other than with or for ready Money) or shall bet on the Hands of such as do, or shall lose any Sum or Sum of Money, exceeding the Sum of 100 *l.* at any one Time or Meeting, upon Credit, and shall not pay down the same at the Time when he shall lose the same, the Party who shall lose the said Money above the said Sum of 100 *l.* shall not be bound or compelled to make good the same: And all Judgments, Statutes, Recognizances, Assurances, Conveyances, Bonds, Bills, Specialties, Promises, Covenants and Agreements, Deed and Securities whatsoever, given or entered into for Security or Satisfaction, shall be void, and of none Effect; and the Person so winning the said Money shall forfeit treble the Value of all such Money as he shall win above 100 *l.* and the Informer to have his treble Costs.

In the Case of *Walter Whitgrave*, and *Edward Chancey*, 1 *Lut.* 180, all the Court was of Opinion, that *Indebitatus Assumpsit* lies not for Money won at Play, but it ought to be a special Declaration; for here indeed is nothing to raise a Debt, for that must be upon Money lent, or some other precedent Thing, or some meritorious Action.

In *Johnson's* and *Samworth's* Case, *Raym. Reports*, fo. 13. the Defendant in Consideration the Plaintiff would give to him 5 *s.* he would give to the Plaintiff 40 *s.* if ever he played at a Game called *Even and Odd*, for Money or Wine: It was moved in Arrest of Judgment, that there was not any such Play; but the Action was good, and the Court approved of the Consideration to restrain young Men from Gaming.

Debt on a Bond for Payment of 100 *l.* and upon the Trial for the 100 *l.* Special Verdict found

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found that there was a Ring lost at Play of 20*l.* Value, which was paid, and there was lost at the same Time and Play 100*l.* on Credit, for which the Bond was given. *Per Cur.* This Bond is not within the Statute, but is good. *Sid. fo. 344.*

But a Bill of Exchange drawn for Money won at Play, is within this Statute.

A Man may have Remedy against those Persons that fraudulently cheat him by Gaming, by Action on the Case, and so recover his Money lost in Damages: or he may punish them by Indictment at the King's Suit, or by Information of the Party grieved.

If two Men are common Hazardors, and use with false Dice to cheat the King's Subjects, and they join together, and with false Dice deceive *J. S.* of his Money, if they are found guilty, they may be adjudged to stand in the Pillory; and so they did. *1 Rol. Abr. 78. Bickingham's Case.*

A Man being cheated at a Tavern in *London*, and having given a Judgment for the Money, moved in the *King's-Bench* to reverse the Judgment upon the Fraud, and the Court ruled Execution to be stayed till the Matter be examined: And *Foster* and *Twyfden* advised the Party to bring an Information against the Cheat, and also against the Vintner. *1 Lev. 53.*

Every Justice of Peace may, as well within the Liberties as without, enter into any Common House or Place where any playing at Bowls, Dice, Cards, Tables, or at any other Games prohibited by Statute, shall be suspected to be used against the Stat. 33 *H. 8. c. 9.* and may as well arrest the Keepers of such Place as the Players there,

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there, and imprison them till such Keepers find Sureties to the King's Use, to be bound by Recognizance no longer to occupy any such Play, or Place, and the Persons found there playing be likewise, with Sureties, no more to play or haunt to any of the said Places, or to any of the said Games.

It is an Article of Enquiry at the Sessions, if any for Lucre-sake keep any Place of Bowling, Tennis, Dicing, or other unlawful Games, he shall forfeit 40 s. for every Day, and every Person haunting it and playing there, shall forfeit for every Time 6 s. 8 d.

At the Lent Assizes at *Stafford*, 29 Eliz. before *Manwood* Ch. Baron and *Windham*, Justices of Assize there, divers were taken by L. one of the Justices of Peace there, and were indicted thereof, and he that kept the House where they played also; and he that kept the House was fined 5 l. and every one that played 20 s. and they were committed to Prison till they paid their Fines; and there was above twenty of them that played in the said House at one Time.

*Of Bills and Bonds for Money won at Gaming, —
by the Statute 9 Ann. c. 14.*

All Notes, Bills, Bonds, &c. given by any Person, where the Consideration is for Money, or other valuable Thing won by Gaming, or playing at Cards or Dice, Tables, Tennis, Bowls, or other Game, or by Betting; or for repaying any Moneys knowingly lent for such Gaming or Betting, or lent at the Time and Place of such Play to any so gaming or betting, &c. shall be void; and where Mortgages shall be of Lands, &c.

or shall incumber or affect the same, such Mortgages shall devolve upon such Persons as should or might have, or be intitled to such Lands, &c. in case the Grantor thereof had been dead.

Any Person playing at Cards, Dice, &c. or betting or losing the Value of 10*l.* and paying the same, may within three Months sue for and recover the Money so lost of the Winner, with Costs; and if the Owner doth not sue, any other Person may, and recover the same, and treble the Value, with Costs, against such Winner.

Any Person who shall by Fraud, &c. in playing at Cards, Dice, &c. or by bearing a Share in the Stakes, or by Betting, win any Sum of Money, &c. above 10*l.* at one Time or Sitting, such Person so convicted on Indictment shall forfeit five Times the Value of the Sum, or other Thing so won, and suffer such Punishment as in Cases of wilful Perjury.

If any Person shall assault and beat, or challenge to fight, any other Person, on Account of Money won by Gaming, &c. being convicted thereof, he shall forfeit all his Goods, and suffer Imprisonment during two Years.

Persons having no visible Estates, not making it appear that the principal Part of their Maintenance is got by other Means than Gaming, are to be bound to their good Behaviour.

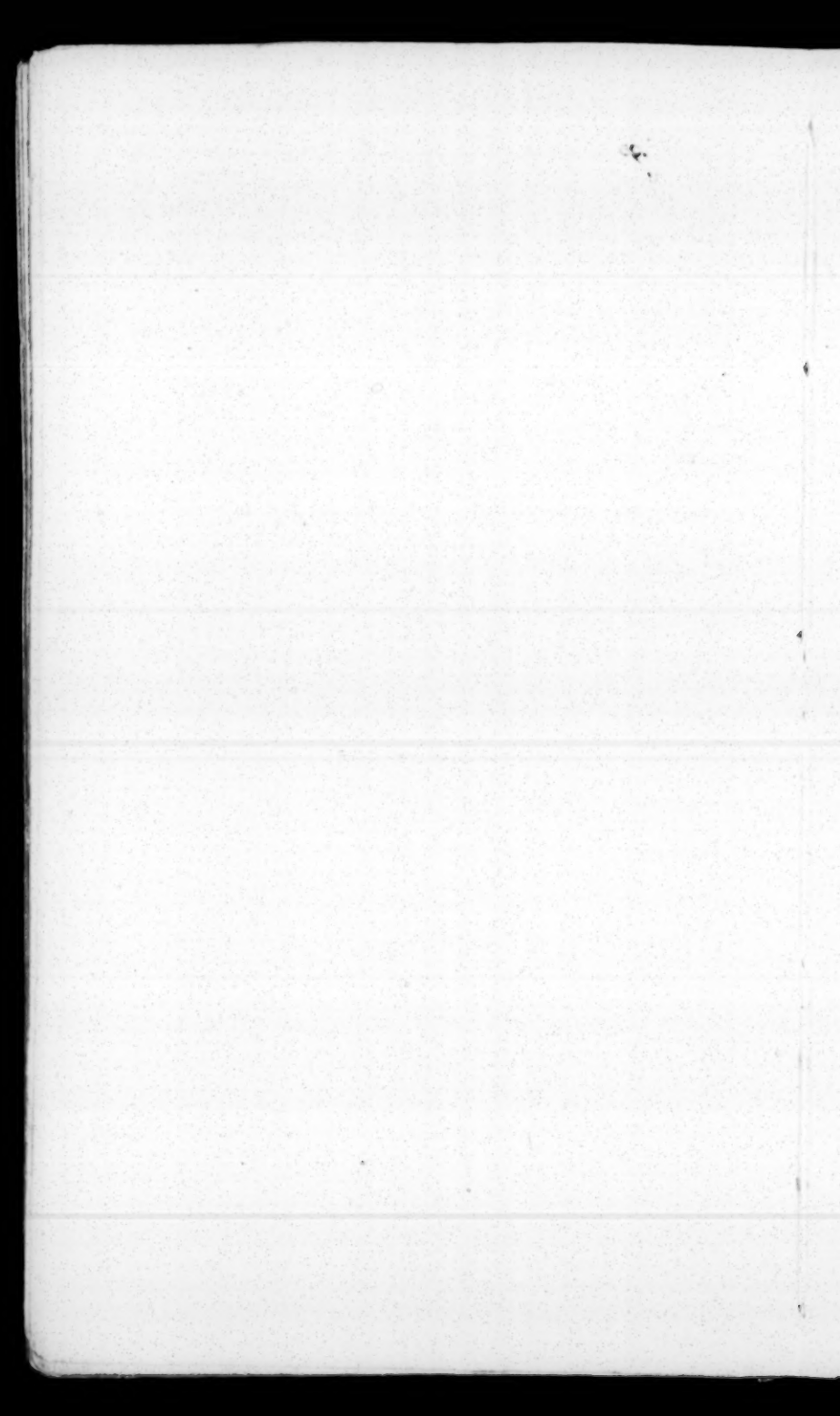
There is a Proviso in the late Statute against Frauds committed by Bankrupts, which gives Benefit to Debtors who will honestly come in and conform to the said Act. The Proviso runs thus: Be it provided and enacted, That nothing in this Act contained shall extend to give any Privilege or Advantage to any Person against whom a Commission of Bankrupt shall be awarded,

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awarded, who shall have lost in one Day the Sum or Value of 5 l or the Sum or Value of 100 l. within the Space of twelve Months next preceding his or her becoming a Bankrupt, in playing at Cards, Dice, Tables, Tennis, Bowls, Cock-fighting, Horse-Races, or other Pastime or Game; or in or by bearing a Part or Share in the Stake, Wagers or Adventures; or in. or by betting on the Sides or Hands of such as do or shall play, act, ride or run, as aforesaid.

Note, I have been a little larger upon this. because Gaming hath been the Ruin of many Families.

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